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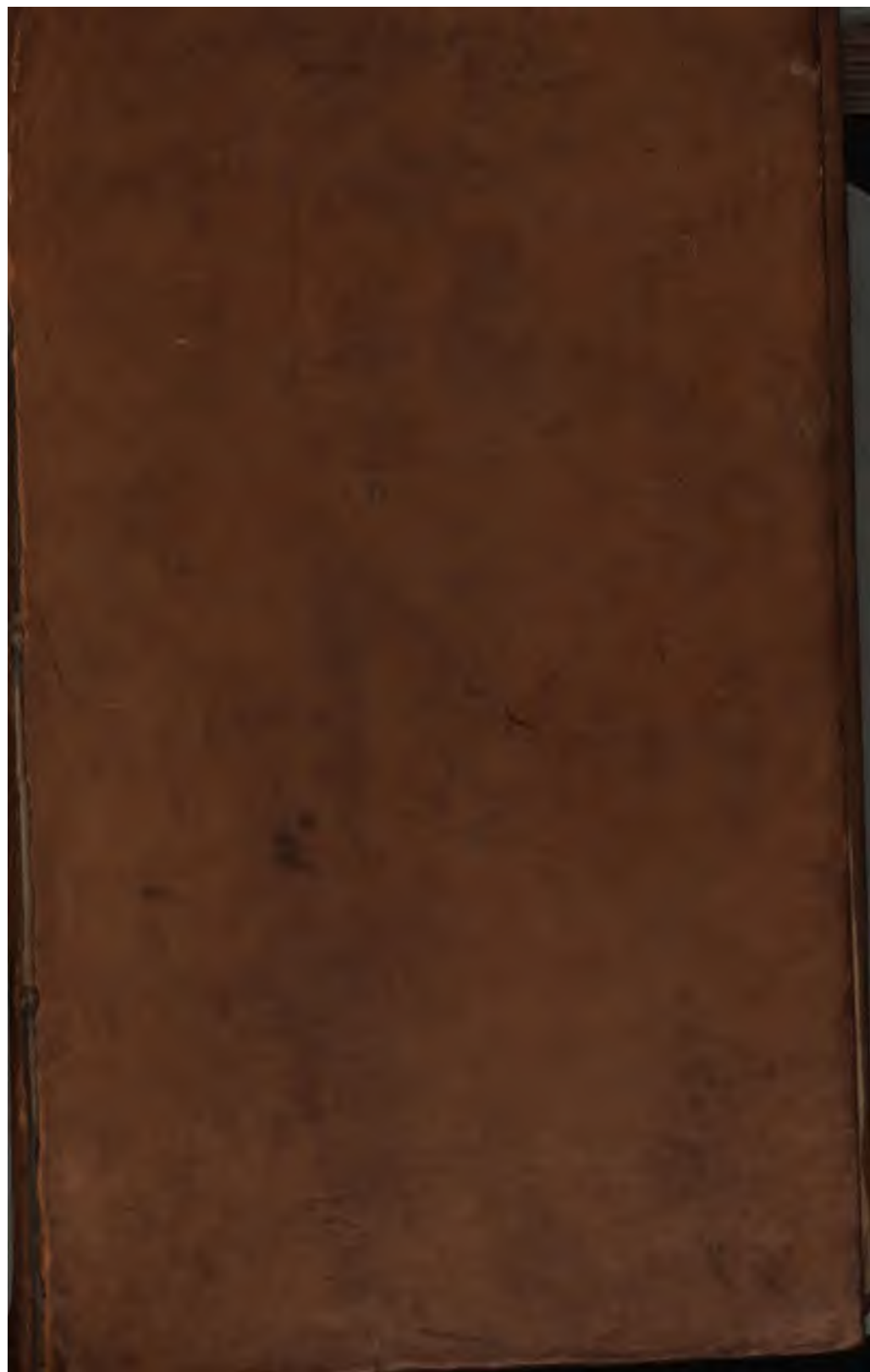
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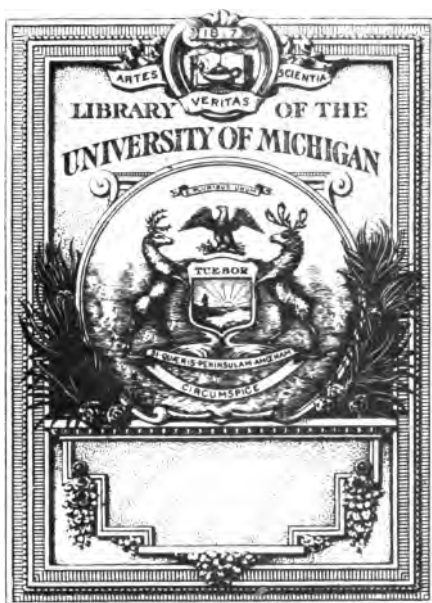
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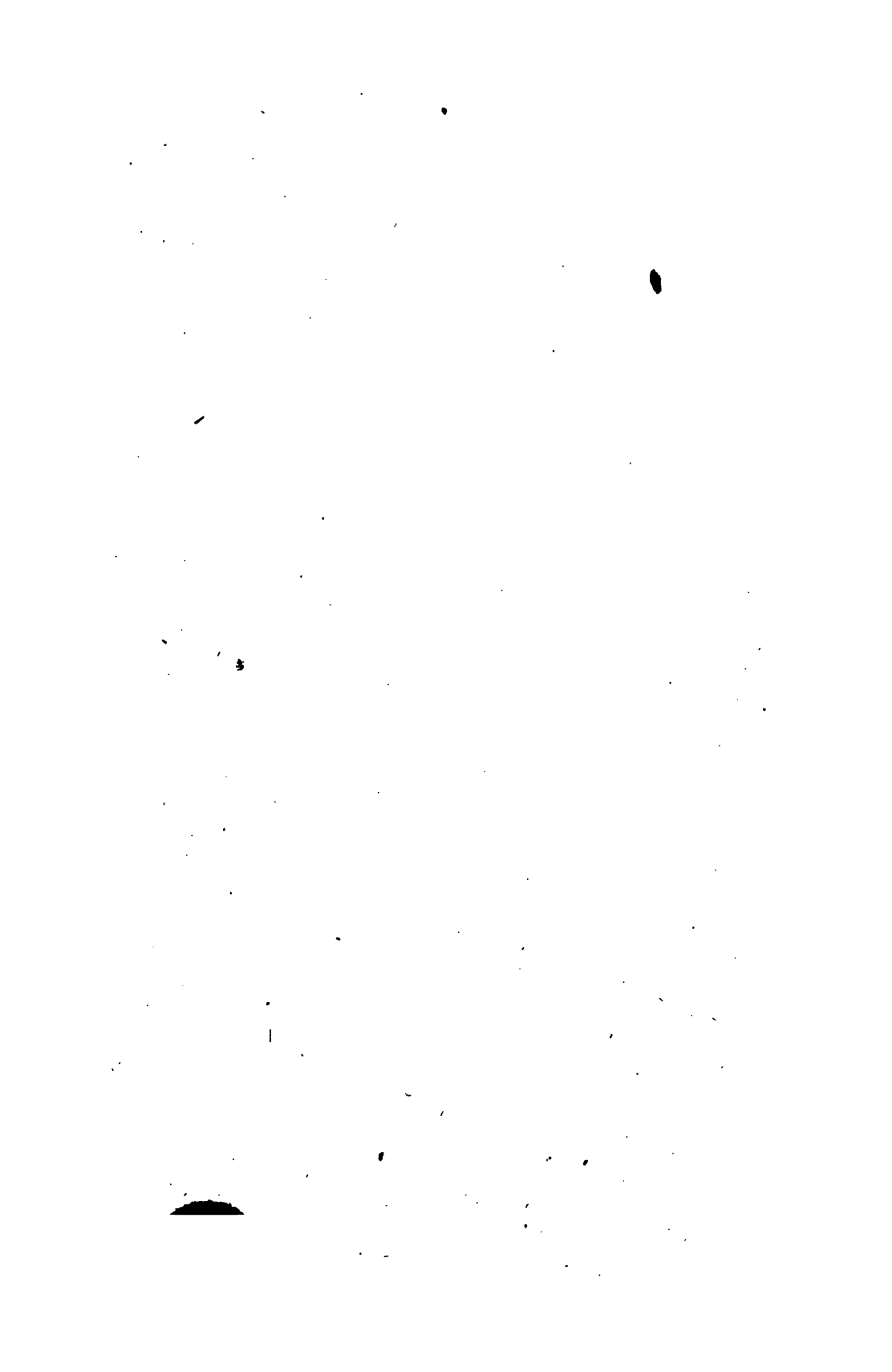
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NOTES

FOURTH and FIFTH BOOKS

OF THE

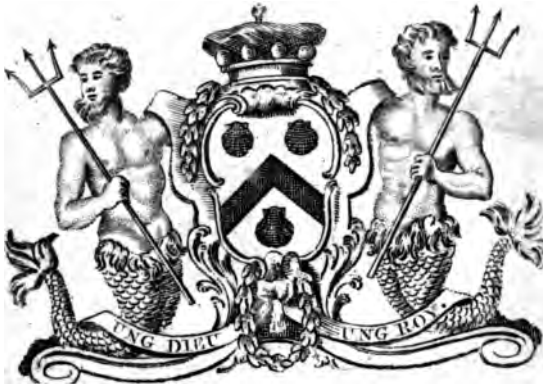
HISTORY

OF THE

Life of King Henry the Second.

With an APPENDIX to each.

By GEORGE Lord LYTTELTON.



DUBLIN,

Printed by and for GEORGE FAULKNER.

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N O T E S

TO THE

SECOND BOOK

OF THE

Life of King Henry the Second.

PAGE 10. *He therefore summoned a parliament, wherein almost all his nobles were present, and having properly laid before them the wants of the crown, the losses it had suffered, the illegality of the grants, and the urgent necessity of a speedy resumption, obtained their concurrence to it, and proceeded to put it in immediate execution.*

It does not appear that this secret article of the treaty of Winchester had received the sanction of parliament, as the three others had done, during the life of King Stephen. That prince (one may presume,) delayed to ask it, for fear of offending the nobles of his own faction; and Henry durst not press him (as he did in other instances) to execute this part of the agreement between them, lest he should take advantage of it to excite new commotions in England, before he himself had obtained a peace from Louis. It was therefore necessary to ask the concurrence of parliament to this resumption, after he came to the crown: and he seems to have acted wisely in not proposing it to them, till the expulsion of the foreign troops, and demolition of the castles, had been fully executed.

P. 12. *The cause assigned for these resumptions was not a defect in the title of the grantor, &c.*

Some historians have indeed given that reason for them; but the fact itself proves the contrary. For, in that case, only the grants which Stephen had made would have been

NOTES TO THE SECOND BOOK OF

Neubrigen.
p. 282. l. ii.
Gerv.Chron
p. 1377.

refused by his successor, not those of Matilda. Besides we are assured, that Stephen himself had consented to these resumpstions at the treaty of Winchester, which he would never have done upon the foundation of the grants being illegal, *because made by him*. The true reason was the poverty of the crown, (or to use the words of William of Newbury) *quad regii redditus breves essent, qui avito tempore uberes fuerant*; and the danger of leaving in the hands of the barons so many of the royal fortresses, which Gervase calls, with great propriety, *Rebellionum materiam, et suspicionem causas*.

P. 19. *He therefore joined two laymen in the commission, the earl of Leicester and Richard de Lucy.*

It seems that the earl of Leicester had the precedence of Richard de Lucy, though both are styled equally *Justiciarii Angliæ*, in the records of those times. Dugdale, in his Baronage, supposes that the latter was not made Justiciary till the eighth year of Henry II, and quotes for it Roger Hoveden, who says no such thing, but only mentions him as Justiciary in some of the transactions which passed in that year. Indeed this work of that learned author is much more inaccurate than most of his other writings, and ought to be read with caution.

P. 23. *And just before the death of Stephen the archdeaconry of Canterbury was likewise given to him by the same prelate.*

FittStephen says that the archdeaconry of Canterbury was the first dignity in the church of England, next to bishops and abbots, and was worth to Becket a hundred pounds *per ann.* equivalent to a benefice of fifteen hundred at present. *Post episcopos et abbates, in ecclesia Anglorum hic primus et dignior est personatus, et ei valebat centum libras argenti.*

P. 25. *The Chancellour of England, at this time, had no distinct court of Judicature in which he presided; but he acted together with the Justiciary and other great officers, in matters of the revenue, at the Exchequer, and sometimes in the counties, upon circuits.*

Breton who flourished in the reign of Edward the First, writing of all other courts, from the highest tribunal to the court-baron, makes no mention of the chancery (see Dug-

Dugdale's Origin. Juridicales). And Mr. Madox says, that, till the reign of King John, the chancery was usually holden at the Exchequer, the great seal being commonly kept, and many or most of the chancery writs dispatched and sealed there. But the same author has shewn, that, in the reign of Henry the Second, pleas were held in the county of Kent, before the king's Chancellour, and the earl of Leicester, chief-justice, and also before the Chancellour and Henry de Essex, high-constable (see Madox's History of the Exchequer, c. ii. p. 42, 43.

We have a description of the office of Chancellour in the following words of a contemporary writer of Becket's life: "Cancellarii dignitas est, ut secundus à rege in regno " habeatur; ut alterà parte sigilli regii, quod et ad ejus " pertinet custodiam, propria signet mandata: ut capella " regia in illius sit dispositione et cura: ut vacantes " archiepiscopatus, episcopatus, abbatias et baronias cap- " dentes in manum regis ipse suscipiat et conservet: ut " omnibus regius adsit consiliis; etiam non vocatus acce- " dat: ut omnia sigilliferi clerici regii sua manu signentur" (see Dugdale's Origin. juridical. & Selden. upon the office of Chancellour). But the dignity of this office is exaggerated by this author, probably from a desire of doing honour to Becket. For the Dialogus de Scaccario expressly says, that the Great Justiciary had the precedence in the court of Exchequer before the Chancellour, and it appears from many other proofs that his power and dignity were greater at this time. Nor is it true that the custody of vacant prelacies or of baronies escheated to the crown belonged officially to the Chancellour. For it appears evidently by the rolls, that the king committed it to whom he pleased (see Hist. of the Exchequer, c. 10.) Some of these had been granted to Becket, but not in right of his office. Upon the whole, this passage deserves little regard.

There are some verses of John of Salisbury, in his preface to his Policraticon, which have made some persons think, that, as early as in the reign of King Henry the Second, the Chancellour had a power to temper and moderate the common law by equity. The verses are these:

- " Quærendus regni tibi cancellarius Angli,
- " Primus sollicita mente petendus erit.
- " Hic est qui regni leges cancellat iniquas,
- " Et mandata pii principiis æqua facit.



no evidence in records or history. It does not well appear, why Diceto, the annals of Waverley, and the Norman chronicle, in the passages cited above, mention only Carlisle, the castle of Bamburg, and Newcastle upon Tyne, as yielded now to Henry by the king of Scotland; whereas it is certain, from the testimony of William of Newbury, and other good evidence, that all the three Northern counties were delivered up to him. These were indeed the chief places of Cumberland and Northumberland; but the counties should have been mentioned, as they are very distinctly, by William of Newbury, a contemporary historian.

▼. Neubrig.
l. ii. c. 4.

V. Chronic.
Johan. Wallingford.

With regard to the claim which the kings of England had of homage for Lothian, these are the words of the Wallingford chronicle, written by an Abbot, who lived under Henry the Second: "Suggestit rex Kineth regi Eadgaro Louthion ad suum jus debere pertinere, et hæreditariè à regibus Scotorum possideri. Rex nolens aliquid abruptè facere ne post factum pœniteret, regis Kineth causam curiæ suæ intimavit. Proceres vero, qui à progenitoribus erant eruditi, nisi sub nomine homagii regi Angliæ à rege Scotorum impenssi, et præcipuè quia ad tuendum terram illam difficilis est accessus et parum proficua ejus dominatio, assensit autem assentioni huic Kineth, et sub nomine homagii eam petiit et accepit, fecitque regi Eadgaro homagium sub cautione multa promittens, quod populo partis illius antiquas consuetudines non negaret, et sub nomine et linguâ Anglicanâ permanerent. Quod usque hodie firmum manet. Sicque determinata est vetus querela de Louthion, et adhuc nova sæpe intentatur."

Though the passage is evidently mutilated in two places, enough of it is clear, to prove a very ancient dependence of Lothian on the English crown. Which is also confirmed by Matthew of Westminster, with this remarkable circumstance, "Dedit insuper ei rex (Eadgarus) mansiones in itinere plurimas, ut ipse et ejus successores ad festum venientes, ac denuo revertentes, hospitari valuissent, quæ usque in tempora regis Henrici secundi, in potestate regum Scotiæ remanserunt." Florence of Worcester also so far confirms it, that he reckons Keneth among the kings and princes who swore fealty to Edgar. The story told by this historian of Keneth and seven other princes of the Cumbrian Britons

or

of Welch having rowed the barge of Edgar on the river Dee, I much doubt of : but his evidence as to the *vassalage* of Keneth is not liable to the same objections,

P. 37. *and the English monarch conferred on him the earldom of Huntingdon, against the claim of the earl of Northampton, to whose father it had been given by Stephen on the death of Henry prince of Scotland.*

No mention is made, in any history or record, of the county of Cambridge being annex to this grant of the earldom of Huntingdon. Yet it appears by records, that David, the grandfather of Malcolm, received the third penny of the county or earldom of Cambridge, when he was earl of Huntingdon. Possibly the two counties were then united. We also find that the young King Henry added it to the grant of Huntingdonshire, which he made to David the brother of William King of Scotland, when he confederated with that prince against his father, in the year 1173. After this we hear no more of this earldom, till Sir John of Haynault brother of William earl of Holland and Haynault, was made earl of Cambridge by King Edward the Third.

P. 38. *but, from some remains of it, which are still to be seen, and for several other reasons, I should judge that it (viz. Offa's Ditch) was rather intended for a boundary, to separate the territories of the English from those of the Welch, than to protect the former, as a fortification.*

A law of Harold Harefoot is mentioned by Mr. Selden, which enacts, that if any Welchman, coming into England without leave, was taken on this side of Offa's Ditch, his right hand should be cut off by the king's officer. This statute shews, that, so late as in the reign of that Danish monarch, this ditch was considered as a discriminating limit between the two nations; but afterwards, when all the borders of Wales beyond that ditch were filled with English colonies, and the Welch themselves had submitted to the sovereignty of the English under feudal bonds of allegiance, it was necessarily abrogated, and fell into disuse.

P. 40. *but the two younger were subordinate to the eldest, who bad North-Wales, and held his royal seat at Aberffraw in the isle of Anglesea, which was the Mona of the Britons.*

Vid. Prefat. Gul. Clarke ad Leg. Wal.

The very intelligent and sensible author of the general Preface to Wotton's collection of the Welch Laws is of opinion, that the sovereignty of the kings of North-Wales over those of South-Wales and Powis-land did not exist in these times, but was a claim set up afterwards, about the days of our Henry the Second. Though I perfectly agree with him in most other points, I do not think his arguments here are sufficient to overturn the authority of so many writers as are unanimous in the other opinion, which I the rather incline to, because it seems that the Welch would hardly have continued without a head, or under princes independent the one of the other, when they had a constant war to maintain with the Saxons. It is therefore very probable, that they gave a pre-eminence to the king of North-Wales, whose country was the strongest; and that the two others were subordinate to, and dependent on him; as, in each royal family of the three kingdoms, the younger sons were on the eldest.

P. 40. *and made a reformation of their political, civil, and municipal laws, which were digested by him into three books.*

Vid. Prefationes IV. ad Leg. Wall.

In the four prefaces to these laws, as published in England, I find a great difference with regard to the manner in which Howel Dha made this reformation. The first says, he convened out of every *commote* (which was a lesser division of *cantreds*, or *hundreds*) six men, among whom were persons of dignity in the church, bishops, archbishops, abbots, and doctors; that out of the whole number of these, when assembled together, twelve of the wisest laymen were chosen, and one clergyman of the greatest reputation among them for knowledge in the laws, to whom the king gave authority to abolish such laws as they should judge to be bad, and substitute others in their place; which work, being finished, received a sanction from all the assembly. Blegored (who at that time was archdeacon of Landaff) is afterwards mentioned in that preface, as having had a principal hand in this reformation.

The

THE LIFE OF KING HENRY II.

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The second preface says, that, out of the wisest men in his territories (*in principatu suo*) Howel assembled six from every *cantred* (not *commote*) in all Wales, of which four were laymen, and two were ecclesiasticks; that *these* examined the laws then in use, alleviated what seemed too severe, and aggravated what was too light; left some unaltered; amended, or abrogated others; and enacted some new ones. With this account the fourth preface perfectly agrees.

But the third agrees with the first, that the six men were chosen from every *commote* in Wales; and that they delegated their authority to twelve laymen, and one clergyman, namely, Blegored, of whom no mention is made in the other two.

It is plain, from these differences, that none of the four prefaces were affixed to the laws by Howel Dha, but were added in later times. The first of them is supposed to be the most ancient. Some authors report that Howel went in person to Rome, and obtained the pope's confirmation of the laws he had compiled. But none of the prefaces mention this circumstance; and (as an author who understands the Welch language affirms) it is not to be found in the original history of Caradoc of Lancarvan, though it is in the translation of Humphrey Llwyd, published by Dr. Powel: that translator having added, not very judiciously, some things of his own to the text of his author. The fact in question is evidently false: for it is impossible that the pope could have given his sanction to some of these laws; particularly those concerning divorces, in which a much greater liberty is allowed than the see of Rome has ever admitted; a stinking breath in the husband being accounted there a good reason for a divorce, besides other causes, which it will not be necessary or decent to enumerate here.

Vid. Prefat.
Gul.
Clarke ad
Leg. Wall.

Vid. Prefat.
predict.

P. 50. *Twelve knights, of considerable note and distinction were retained in his service, &c.*

Their names were William de Londres, Richard de Greenfield, or Granville, Paine de Tuberville, Robert de St. Quintin, Richard de Syward, Gilbert de Humfreville, Roger de Berkrolles, Reginald de Sully, Peter le Score, John le Fleming, Oliver de St. John, William le Esterling, called for shortness Stradling.

P. 76.

P. 76. *He therefore resolved to attempt it, and having drawn out of the whole militia of England a very great army, he led it through Cheshire into Flintshire, &c.*

Vid. Chron.
Norm. sub
ann. 1156.

According to the Norman chronicle of Robertus de Monte, there was something very particular in the manner of raising this army. His words are these: "Rex "Henricus præparavit maximam expeditionem, ita ut "duo milites de tota Anglia tertium pararent, ad op- "primendum Gualenses." Mr. Madox has shewn, in his History of the Exchequer, that a scutage was raised for this war on the clergy that held of the crown by knight-service. We must therefore understand the words above-cited, as only extending to lay-fees. But I rather doubt the truth of it, as it is not confirmed by our records, or by any English writer who lived in those times. I find indeed the same words in the annals of Waverley; but as it is probable this part of those annals was not compiled till long afterwards (for the words of the Norman chronicle are often transcribed in them) I think it does not add much to the credit of the original author,

P. 77. *But this appearance was only an artifice to draw the English into a narrow and difficult pass, between two ranges of hills, &c.*

See Cam-
den's Bri-
tannia,
FLINT-
SHIRE.

Camden, in his Britannia, says, that this pass is near the river Alen; and it appears to have been formed by some hills, which, in the map he has given of Flintshire, are placed to the north of that river between Kilken and Flint. Dr. Powel, in his Notes to the Welch chronicle, mentions this action, as it is described by William of Newbury; and says, that the streights, which the English army were then attempting to pass, were at Counsylth, near Flint. Probably they mean the same place. There was another road on the sands along the sea-shore, which Henry, it may be presumed, avoided at first, from an apprehension of some danger in passing those sands, though he afterwards took it, as safer than the former from the ambuscades of the Welch. Giraldus Cambrensis, in his account of this country, has mentioned both. His words are these: "In cellula de Basinwerke "pernoctavimus. In crastino vero longum vivumque "per loca sabulum, non absque formidine, permeantes, "sylvestria de Coleshull, id est, Carbonis colle, à dextrâ "reliquimus, ubi Anglorum rex, Henricus secundus, "nostris

“nostris diebus, cum primo Walliam hostiliter intravit, juvenili impetu et inconsulto calore arctum illud sylvestre penetrare præsumens, cum detrimento suorum et damno non modico, ambiguum bellorum aleam expertus est.” The place which Camden and Giraldus call Coleshull, or, in modern English, *Colebill*, is called in the Welch chronicle *Caed Eulo*. But it is observable, that, by the account which is given in that chronicle of this engagement, it seems that the king was not present in it himself, but only a detachment from his camp near Chester. Nevertheless, the clear testimony of Giraldus Cambrensis, William of Newbury, and Gervase of Canterbury, contemporary writers; and the duel and condemnation of Henry de Essex, in consequence of it, leave us no room to doubt that he was there in person. Perhaps the error is not in the chronicle, but in Humphrey Llwyd’s translation, which, not understanding the original language, I am forced to make use of, as published by Dr. Powel, and since, with some alterations, by the Rev. Mr. Wynne.

P. 84. *and this sufficiently accounts for none of those coins having ever been found.*

Mr. Folkes, in his book on English coins, mentions some pennies coined at York with the name Eustacius. But as Eustace was the king’s eldest son, and as his father desired to have him crowned in his own life-time, I do not reckon these among the coins above-mentioned; though these also would undoubtedly have been melted down and destroyed by King Henry the Second, if they had not been lost, or secreted. Mr. Folkes also mentions another coin he had seen in the earl of Pembroke’s collection, that has the name of King Stephen only on the reverse, and on the obverse a profile head with a crozier and ✠ HEN . . . V S E P. C. which he supposes to be the head of Henry bishop of Winchester, brother to the king (see Folkes’s Table of English Coins, p. 5.) But probably this was coined at one of the Royal Mints.

P. 89. *Some accounts that are given of the luxury and expence of his table are incredible, &c.*

Fitzstephen tells us, that one day there was served up to Becket, during this embassy, a single dish of eels, which cost five pounds sterling (*centum solidis sterlingorum emptum*).

emptum). He adds, that it was talked of all over the country; and well it might; for, twenty shillings in those days containing in them as much silver as sixty in these, or little less, if we estimate silver at only five times above the present value, as much was paid for this single dish of eels, as if we now bought one for seventy five pounds sterling, or thereabouts. But such a price exceeds all belief. And it must be observed, that this author is very apt to exaggerate in his accounts of those times; but more especially in what he writes to the honour of Becket.

P. 99. *Nor does it seem that the policy of those times ever regard'd his dominions upon the French continent as prejudicial to England. Those which were maritime provinces (and most of them were so) appeared very commodious to the English, on account of their trade; especially Normandy and Bretagne; which, lying opposite to their coasts, secured to that nation the sovereignty of the whole British ocean.*

There is a fine passage in the speech, which Lord Bacon, in his History of King Henry the Seventh, puts into the mouth of Thomas Morton, archbishop of Canterbury and chancellor of England, as delivered to the parliament called by that prince in the third year of his reign, on the war which the king of France was then preparing to make against the duke of Bretagne. The words are these: "If the French king shall make a province of Bretagne, and join it to the crown of France, then it is worthy the consideration how this may import England, as well in the increase of the greatness of France by the addition of such a country, *which stretches its boughs unto our seas*, as in depriving this nation, and leaving it naked of so firm and assured confederates, as the Britons have ever been. For then it will come to pass, that whereas, not long since, *this realm was mighty upon the continent, first in territory, and after in alliance, in respect of Burgundy and Bretagne, which were confederates indeed, but dependent confederates*; now the one being already cast, partly into the greatness of France and partly into that of Austria, the other is like wholly to be cast into the greatness of France; and this island shall remain con-

finis

"fined in effect, within the salt-waters, and girt about with the coast countries of two mighty monarchs."

On this I would observe, that a more dreadful evil than Lord Bacon makes Chancellour Morton express his apprehensions of, in the foregoing passage, would have come upon England, if the ambitious designs of France had not been checked by the two *grand alliances* formed in the last century. For, without the resistance they made, not only Bretagne, but *all* the territories of the house of Burgundy, *which stretch their boughs unto our seas*, would have been added to her empire; and *we should have been girt about with the coast-countries of ONE mighty monarch, instead of two.* The present state of the Dutch and the Austrian Netherlands is not such as will absolutely remove that fear from any thinking man: but there will be much more reason to dread it, if we either become indifferent to the state of the continent, or, from the load of our debt, shall be unable to assist our confederates there against the invasions of that power, which hitherto nothing has been able to restrain, but the wealth and valour of this nation exerted in defence of the liberty of Europe, wherein its own is comprised.

P. 105. *Instead therefore of hastening to lay siege to Toulouse, while Louis remained in that city, he declared his resolution, that, out of respect to the person of that king, he would not besiege it.*

For this I have the authority of William of Newbury, the Norman chronicle, Diceto, Brompton, and two contemporary writers of Becket's life, Fitzstephen and John of Salisbury, the latter of whom, from his very intimate connection with that prelate, must have perfectly known all the circumstances of this affair. But Gervase of Canterbury and Hoveden say, that King Henry besieged Toulouse, and lay before it some months. Father Daniel, to reconcile as well as he could these contradictory accounts, has supposed, that, after the town was invested by Henry, and ready to surrender, Louis forced one of the enemy's quarters, and made his way into it; upon which Henry raised the siege. But for this manner of bringing the king of France to the relief of the town he has not a word of contemporary authority. The account given of it by William of Newbury is much the most probable, and consistent with itself.

Pere Dan.
Histoire de
France, l.
vii. sub ann.
1158.

itself. " Idem vero comes, tanti exercitûs impetum per-
 " timefcens, regis Francorum, qui uxoris suæ germanus
 " et filiorum avunculus erat, auxilium imploravit. Qui
 " Zelando pro nepotibus *festinus adveniens* cum ali-
 " quantâ militiâ Tolosam intravit. Quod cum inno-
 " tuisset regi Anglorum, personæ regis ibidem consisten-
 " tis deferens civitatem oppugnare distulit, et ad perva-
 " dendam provinciam expugnandasque munitiones con-
 " vertit exercitum."

P. 108. 109. *but in that month they concluded a treaty of peace, the terms of which were very advantageous and honourable to Henry: &c.*

This treaty is not in Rymer, nor any printed book. But there is a very old copy of it among the Harleian Manuscripts in the British Museum, which, I believe, is the only one extant. It is joined to some select epistles of Becket, which seem, by the hand, to have been collected soon after the death of that prelate. This I presume was added to that collection, because Becket, whose name is among the witnesses to it, had a principal share in negotiating it on the part of his master. Not only it appears, that no modern historian has had any knowledge of it; but there is reason to think, that some of those who lived in that age did not know the contents of it; especially of the first part concerning the Vexin, which absolutely justifies King Henry the Second from any imputation of fraud in the method of acquiring that province. A transcript of it may be seen in the Appendix to this book.

P. 110. *It is observable, that the first mention we meet with in history of this imposition on knight's fees, which became afterwards very frequent, is upon this occasion.*

The words of the Norman chronicle about it are these:
 " Rex Henricus iturus in expeditionem prædictam, et con-
 " siderans longitudinem et difficultatem viæ, nolens vexare
 " agrarios milites, nec burgenfes, nec rusticos, sumptis
 " lxx solidis Andevagensum in Normannia de feudo uni-
 " uscujusque lorica, et de reliquis omnibus, tam in Nor-
 " mannia quam in Anglia, sive etiam aliis terris suis,
 " secundum hoc quod ei visum fuit, capitales barones suos
 " cum paucis secum duxit, solidarios vero milites innu-
 " meros." (V. Chron. Norman. p. 995.)

This

This passage expresses with great clearness and precision both the motive and manner of introducing this commutation for personal service in foreign wars.

Gervase of Canterbury also mentions this scutage in the following words: "Hoc anno (1159) rex scotagium, five scutagium, de Anglia accepit, cujus summa fuit centum millia et quater-viginti millia librarum argenti. De aliis vero terris sibi subiectis *inauditam* similiter census fecit exactionem." Nevertheless Mr. Madox has shewn, in his History of the Exchequer, that a levy of scutage had been made in this kingdom, before the war of Toulouse, viz. in the second year of this king; but it was only assent upon the bishops and abbots who held *in capite* of the crown; whereas this was general.

There is a passage in the ancient treatise, called Dialogus de Scaccario, written in the reign of Henry the Second, and published by Mr. Madox, from the Black and Red books of the Exchequer, which makes a particular mention of scutage; "Fit interdum, ut imminente Lib. i. c. 22. tit. Scutagium. vel insurgente in regnum hostium machinatione, decernatur rex de singulis feodis militum summam aliquam solvi, marcam (scilicet) vel libram unam, unde militibus stipendia vel donativa succedant. Mavult enim princeps stipendarios quam domesticos bellicis opponere casibus. Hæc itaque summa, quia nomine scutorum solvitur, scutagium nuncupatur." From these words one should think, that scutage had been raised for the defence of the kingdom against invasions. But, besides that the Norman chronicle, which, down to the year 1161, was written by Robert de Monte, a contemporary author, shews us the contrary; the ancient form of charging it was, *pro exercitu, de iis qui non abierunt cum rege* (see History of the Exchequer); and, during this reign, I never find it taken but for some war beyond the English borders. And Lyttelton in his *Tenures*, says, that *those which hold by escuage* (which is a French translation of the Latin word *scutagium*) *ought to do their service out of the realm* (see Lyttelton's *Tenures*, Grand Serjeantie, sect. 153.) He also says, that *they who hold by castleward, pay no escuage* (tenures of knight-service, sect. 111.) the reason of which, says lord Coke, was, because castleward was a service *within the realm*. Therefore the words *imminente vel insurgente in regnum hostium*

machinatione, cited above from the *Dialogus de Scaccario*, must be considered as loose and inaccurate.

Mr. Madox supposes, in the History of the Exchequer, that, till the times of King Henry the Third, whenever any scutages were to be levied, the barons and tenants *in capite* did, by the king's command, send in certificates of their respective fees, either *toties quoties*, or, at least, most usually. For it appears by a record, that, in the eighteenth year of Henry the Second, some persons were charged with the scutage of Ireland, under the title, *De iis qui cartas non miserunt*. (See History of the Exchequer, p. 440, c. 16.)

In the passage quoted above, from the *Dialogus de Scaccario*, it is said, that a mark, or a pound, was the scutage usually charged upon every knight's fee. No computation can be made at what rate each knight's fee was charged to the scutage for the war of Toulouse, because, though we know the whole sum produced by it, we are not assured from how many knight's fees it was raised. But, by the greatness of the sum, the rate must have been considerably more than a mark, or a pound. I should suppose that the scutages varied according to the service for which the military tenant commuted. If he was required to follow the king to a very distant country, the composition to exempt him from the obligation of performing that service was higher. But where it was taken for a war on the borders of England, a lighter might suffice. The first scutage raised by King Henry the Second for the army serving in Wales, was at one pound a knight's fee. This was in the second year of his reign, when the prelates only paid it, as appears by a passage in the Red book of the Exchequer. Yet Alexander de

L. Rub. fol.
not. 47. col.
2. Madox
Hist. of Ex-
chequer,
Esutage, c.
16. p. 435.

Swereford, who made the collections in that book, under Henry the Third, mentions another scutage for Wales, in the fifth year of Henry the Second, which amounted to two marks for every knight's fee. It must have been charged at the latter end of that year, when we find that some commotions arose in Wales, the king being still abroad in the war of Toulouse. And it is very surprising, that in the abovementioned book there should be no notice taken of the great scutage for that war, but only of this for Wales. I doubt whether this was a scutage. Alexander de Swereford says himself, that it was entered upon the rolls, not *scutagium*, but *denum*; and that some paid it, who did

not

not hold by military tenures. It also appears, that it was determined by the Chief-justice of the Common-pleas in the reign of Edward the Third, *that escuage shall not be granted but where the king goeth in proper person* (see Lyttelton's Tenure, p. 20. tit. Escuage). As therefore Henry did not go himself to this war, this could not be taken as *escuage*, but must have been granted as an *auxilium* or *donum*. Mr. Madox observes, that, in Henry the Second's time, aids were called *dona*. (V. Præfat. ad Dial. de scaccario.)

The words of Alexander de Swereford are very express to prove, that no scutage had been raised in England, before the reign of Henry the Second. *Primum omnium scutagiorum, prout rumor ex rotulis ad me devenit, assisum fuit anno regni regis Henrici, filii imperatricis, secundo.* Nevertheless there is an article in the printed copies of King John's *Magna Charta*, taken from Matthew Paris by Dr. Brady, and by Wilkins, in his Collection of Anglo-Saxon laws; which, if it were genuine, would contradict this assertion. It stands thus: "Scutagium de cætero capiatur, sicut capi tempore regis Henrici avi nostri consuevit." Now, as *avi nostri* cannot signify the father of John, but may his great-grand-father; this would be a proof, that scutage was taken in the time of King Henry the First. But this article is not found in the most authentic copies. And I make no doubt, that it got into Matthew Paris's copy from the charter of Henry the Third, where it stands very properly, because Henry the Second was *grandfather* to that king.

L. Ruber, &
Madox, ut
supra.

See the Edition of it by
Blackstone.

Mr. Madox indeed has mentioned a writ, which he found in the private Archives of Westminster-college, and by which Henry the First grants to the abbot and monks of Westminster an exemption from scutage, for an estate they held of the earl of Chester: but, even admitting the writ to be genuine, it will be no proof against the opinion of Alexander de Swereford; because *scutagium* (as Mr. Madox himself tells us) *when used in an extensive sense, did anciently signify any payment made upon knights fees.* We also know, that it signified *servitium scuti*, or knights-service. And therefore the words of the writ, *Quiete de scutagio et omnibus secularibus consuetudinibus*, may be well understood to mean an exemption from military service, and all other secular customs.

NOTES TO THE SECOND BOOK OF

If a military tenant either went in person with the king to a war out of England, or sent another to serve for him, he paid no scutage. Thus, in the eighteenth year of Henry II several persons are charged to escuage, under this title, *De scutagio militum, qui non abierunt in Hyberniam, nec milites pro se miserunt*. See Madox of Escuage, Hist. of Excheq. c. xvi. p. 438, 439. Indeed escuage in the sense of a pecuniary payment, being a *commutation for a service arising out of a tenure*, viz. the tenure by knight's-service, when that service was performed in another manner, by the military tenant's sending a man to serve for him, such *commutation* could not take place. There was also a difference between this composition by escuage, and the *finés* paid to the king by barons and knights holding in chief of the crown, for not serving abroad, when they had been ordered to do so by summons from the king. Earl William de Vernon fined to King John, *pro licentia remanendi*, and *that the king would receive the scutages of his knight's-fees which he held in capite*. In the reign of King Henry the Third, several tenants by knight's-service paid *finés* to the king, *that they might not take the voyage into Gascoigne, besides the scutages which they voluntarily granted to the king for that voyage*. (see Madox, ut supra, c. xvi. p. 459.) These instances shew, that scutages were not always accepted by the king, in lieu of the duty of personal service from his military tenants. Nor indeed could they; because mercenary soldiers, and chiefs of experience to command them, were not always to be had at the time they were wanted. And it seems to have been in the option of the king, whether he would accept them or not. Mr. Madox has given it as his opinion, "that *personal service* " was required *most chiefly*, if not *solely*, of the tenants " holding by knight's-service *in capite, ut de corona*. " For, if a man held his land of the king by knight's- " service, as of an honour then being in the king's " hands, and not of the crown, such tenant was " not indispensably obliged to do *personal service in* " *the king's army*, but was to pay the king escuage " when it was assented. At least this was alledged to be " the usage in the reign of King Edward the Second in " the case of Gerard de Wacheham, and Thomas de " Inglestorp" (see Madox, ut supra, p. 454.) I much doubt whether it was so in the times of King Henry the Second;

Second; as I see no reason for it in the feudal policy; the tenants of an escheated barony being obliged to perform the same service to the king, that they would have performed to the baron. The same author says, "Sometimes the barons and tenants by knight's-service were amerced, for not sending their knights to serve for them in the king's army; and sometimes they were disseised of their land for not doing their service;" of both which he gives several instances from the rolls (see Madox, ut supra, p. 461.) "But when barons or knights, holding *in capite*, did actual service in the king's army, for so many fees as they were answerable for; or *if they sent knights in their stead, or if they made fine for the same*, they were wont to be acquitted of escuage:" (see Madox, ut supra, p. 462.) It must be observed, that, as some knight's fees were smaller than others, the scutage upon them was also less in proportion.

P. III. *whereas we find it declared, by the charter of King John, that scutages ought to be assayed by the tenants in chief of the crown assembled in parliament.*

Although this clause be left out of all the subsequent charters, yet it appears, by a writ of King Edward the First's reign, cited by Mr. St. John, on the behalf of M. Hampden, in the case of ship-money, that scutage was granted by Parliament: "Datum est nobis intelligi, quod plures sunt qui tenent per servitium militare de nobis, qui contradicunt solvere *scutagia, quæ nobis sunt concessa per commune concilium regni nostri.*" And many processes, issued for the levying of escuage granted in Edward the first's time, were released by Edward the Second; *Quia dictum servitium non fuit communiter factum* that is, says Mr. St. John, that it was not done *per commune concilium regni*. The words of Sir Thomas Lyttelton, concerning this matter, require some observation: Coke upon Lyttelton, sect. 97. "And after such a voyage royal into Scotland, it is commonly said, that, by authority of parliament, the escuage shall be assessed, and put in certain; that is to say, a certain sum of money, how much every one which holdeth by a whole knight's fee, which was neither by himself, nor by any other for him, with the king, shall pay to his lord, of whom he holds his land by escuage. As, put the case, that it was ordained by

Sect. 98.
ibid.

“ the authority of the parliament, that every one which
 “ holdeth by a whole knight’s fee, who was not with the
 “ king, shall pay to his lord 40 s. That he which
 “ holdeth by the moiety of a knight’s-fee, shall pay to
 “ his lord but 20 s. and he which holdeth by the fourth
 “ part of a knight’s-fee, shall pay but 10 s. and he which
 “ hath more, more ; and which less, less. And some
 “ hold by the custom, that, if escuage be assessed by au-
 “ thority of parliament at any sum of money, they shall
 “ pay but the moiety of that sum, and some but the
 “ fourth part of that sum. But because the escuage that
 “ they should pay, is uncertain ; for that it is not certain
 “ how the parliament will assess the escuage, they hold
 “ by knight’s-service. But otherwise it is of escuage
 “ certain, of which shall be spoken in the tenure of
 “ socage.” The same author says, in his chapter on
 socage, sect. 120. “ Also if a man holdeth of his lord
 “ by escuage certain, i. e. in this manner, when the
 “ escuage runneth, or is assessed by parliament, to a
 “ greater or lesser sum, that the tenant shall pay to his
 “ lord but half a mark for escuage, and no more nor less,
 “ to how great a sum, or to how little the escuage run-
 “ neth, &c. such tenure is tenure in socage, and not
 “ knight’s-service.”

The former chapter on escuage further declares, sect.
 100. “ And it is to be understood, that, when escuage
 “ is so assessed by authority of parliament, every lord of
 “ whom the land is holden by escuage, shall have the
 “ escuage so assessed by Parliament ; because it is intended
 “ by the law, that, at the beginning, such tenements
 “ were given by the lords to the tenants to hold by such
 “ services, to defend their lords, as well as the king, and
 “ to put in quiet their lords and the king from the Scots
 “ aforesaid. And because such tenements came first from
 “ the lords, it is reason that they should have the escuage
 “ of their tenants. And the lords, in such case, may
 “ distrain for the escuage so assessed ; or they, in some
 “ cases, may have the king’s writs directed to the sheriffs
 “ of the same counties, &c. to levy such escuage for them,
 “ as it appeareth by the register.”

All that is said about escuage, in the passages here re-
 cited, relates to the methods in which it was raised upon
 the *sub-vassals* : and it is declared that they pay it by right
 of

of their tenure, *because it is intended by the law, that, at the beginning, such tenements were given by the lords to the tenants to hold by such services, &c.* And though mention is only made of a war against Scotland, as if they had been bound to serve no where else, Lord Coke observes very rightly, “that Scotland is only put for an example; for that, if the tenure be in Walliam, Hiberniam, Vasconiam, Pictaviam, &c. it is all one.”

But it is further observable, that, from the words, *after such a voyage royal into Scotland, it is commonly said, that, by authority of parliament, the escuage shall be assessed, and put in certain*, it seems as if the assessment by parliament was posterior to the expedition for which the escuage was to be paid. Whereas it is said by R. de Monte, that Henry the Second took escuage on account of his expedition against Toulouse, before he went thither: “*Rex Henricus iturus in expeditionem prædictam, et considerans longitudinem et difficultatem viæ, nolens vexare agrarios milites, nec burgenſes, nec rusticos, sumptis lx solidis Andevagensium in Normannia de feudo uniuscujusque lorice, et de reliquis omnibus, &c. secundum hoc quod ei visum fuit, capitales barones suos cum paucis secum duxit, solidarios vero milites innumeros.*” (V. Chron. Norm. p. 995.) Probably it was found more convenient to make the assessments after the service, than before, as it could not be previously known from what number of the tenants by knight-service it was to be taken, because the payment of it might be avoided by those, who either went in person themselves, or sent men to serve for them. But the declaration, that the king would accept it in lieu of personal service, must have been prior to the time of performing the service: for, otherwise the persons concerned would not have known, whether they might have the benefit of such a commutation. Perhaps notice of this may have been given by the summons.

It appears, from the passages above-cited, that some military tenants held under condition of paying but half of the escuage assessed by the parliament, and others but a fourth. Nay, some there were, who so held, as that they were only to pay half a mark to their lord upon an assessment of escuage, whether higher or lower; which

was called escuage certain; and such tenants were not understood to hold by knight's-service, but their tenure was socage. This was a great deviation from the first institution of military fiefs; so great, that it entirely altered their nature. But I find no trace of any such thing in the times that I write of; nor does it appear, that it extended to tenants in chief. All that Sir Thomas Lyttelton says of such tenants is towards the latter end of his chapter on escuage, after having treated of the manner in which it was paid by the vassals; "*But of such tenants, as hold of the king by escuage, which were not with the king in Scotland, the king himself shall have the escuage.*" Sect. 101. Lord Coke says in his notes to sect. 97. of the same chapter, "*Here is a secret of law included, that, albeit escuage uncertain be due by tenure; yet because the assessment thereof concerned so many, and so great a number of the subjects of the realm, it could not be assessed by the king, or by any other but by parliament; and this was by common law.*" He adds, "*No escuage was assessed by parliament since the reign of Edward the Second.*" Nevertheless it appears, that, when Lyttelton wrote, it was the common opinion, that it should be so assessed. And he seems to speak of it as law.

Sect. 97, &
sequent.

Lord Coke also says, "And it is to be observed, that, if he that holds of the king by escuage goeth, or findeth another to go for him, with the king, &c. then he shall have escuage of his tenants, that hold of him by such service, *which must be assessed by parliament.*" But, if the king's tenant goeth not with the king, then he shall pay for his default escuage, and shall have no escuage of his tenants." This latter assertion is false; for Mr. Madox says, in his History of the Exchequer, that "when the lord, holding in capite, did personal service in the king's army, or paid, or became duly charged with his escuage to the king; he was entitled to have escuage of his tenants for the fees which they held of him, and which he held of the king in capite." And this he proves by records. For instance, in the reign of Henry the Third, Henry de Braybrok had a writ of aid directed to the sheriff, *to distrain the knights who held of him the fees, which he held of the king in capite, for the escuage which he stood charged with at the Exchequer.*

Exchequer. Mr. Madox adds, "that, in the elder times, "in case the lord was entitled to receive escuage of his "tenants, such escuage was usually collected by the lord "per manum suam, who used to justiciate or distrain his "tenants to pay it. Whether it was all along necessary V. Madox
Hist. Excheq.
c. 16. sect. 6.
"for the lord to have the king's leave or authority to Sect. 9.
"collect his escuage, per manum suam, or no; such
"leave or authority was sometimes granted to particular
"lords." But he shews, that afterwards escuage was
collected by the sheriffs of the counties. "In the twen-
"ty-seventh year of Henry the Third, when escuage
"was granted to the king by the common-council of the
"realm, writs were awarded to the sheriffs of the coun-
ties, commanding them to take inquisition by oath of
"knights, and lawful men, to find what lands were
"holden of the king, or of others, who held of the king
"in capite, whether of the new feoffment or the old,
"and to distrain the tenants of such fees, to pay their
"escuage for the same."

P. 117. *But as Victor came, and submitted his cause to the council, it gave a reasonable prejudice in his behalf: his adversary was censured as guilty of contumacy; and, after a proper examination of witnesses, he was declared to have been duly elected.*

That he was duly elected, I will not affirm; but certainly the pre-engagement, which it appeared that the cardinals of Alexander's party had laid themselves under before the election, was contrary to the liberty required by the canons. (V. Radevicum, l. ii. c. 52. 71.) And if the nobility, people, and clergy of Rome had a right to interfere in it (as, notwithstanding the Bull of Pope Innocent the Second, I presume they had) Victor, whom, it seems, they all inclined to support, may, upon the whole, have had a majority of votes in his favour. But though mention is made, in some of the letters which justify his election, of their having very strongly declared themselves on his side, yet the principal stress was not laid upon that, but upon the disqualification of the cardinals his opponents, by the oaths they had taken; because, I suppose, to deny the authority of a papal decree was not thought prudent; and the other plea was sufficient to prevail on the council to determine for Victor.

P. 124. *and prevailed upon them to celebrate the form of a marriage, or public and solemn espousals, between Henry his son, not yet six years old, and Margaret of France, who was still a younger infant.*

Vid. Diceto
Imag. Hist.
sub ann.
1160. &
1155.

Diceto says, that Prince Henry at this time was seven years old; but this must be a mistake; for (as he tells us himself in another place) that prince was born on the last day of February, in the year 1155; with which date of his birth the other contemporary historians agree. The same author says, that the princess of France at this time was three years old; but I should suppose her older; because I think, that King Henry would hardly have desired to have her sent into Normandy, while she was at the breast of her nurse, as she must have been in the year 1158 if she was but three years old in 1160.

P. 137. *who remained in the monastery of Bourgdieu, in Berry.*

This convent is called, by the historians of those times, *Monasterium Dolense*; and Pope Alexander's letters from thence are dated *apud Dolum*; because it was founded by the lords of *Deols*: (V. Boulanvilliers *Etat de la France*, t. ii. p. 201.) A castle adjacent to it is, for the same reason called *Castrum Dolense*. It must not be confounded with Dole in Franche Comté.

P. 143. *Nay even these biographers themselves acknowledge, that one reason, which induced Henry to promote him to Canterbury, was, because he hoped, that, by his means, he should manage ecclesiastical, as secular affairs, to his own satisfaction.*

V. Steph-
nid. in vita
S. T.

This is confirmed by Fittstephen, another of Becket's historians, in the following words: "Statuit ergo rex
"Angliæ cancellarium suum in archiepiscopatum promo-
"vere, intuitu meritorum personæ, confidens, quod sibi
"ad placitum et nutum, ut cancellarius fecerat, archie-
"piscopus obsequeretur."

P. 156. *they did not deny the words which were laid to their charge; but alledged, that they were spoken when their minds were heated and disordered with wine.*

V. G. Cam-
brenf. de Vi-
tis sex Epif-
copor. coe-
taneor. in
Angl. sacra,
par. ii. p.
427.

Giraldus Cambrensis, from whom I relate this particu-
lar, tells us, that one of the company said to Henry,
"Perbaps

" *Perhaps we did say the words we are charged with; and we should have said still worse, if our wine had not failed us.*" As Plutarch ascribes the very same answer to some subjects of Pyrrhus, in his Life of that prince; I rather suppose, that this historian applied the expression he found in that author to a similar case, than that it was used in this instance. But as it is certain he was far from being disposed to invent any fiction to King Henry's advantage, I make no question that this story is true in the main; to wit, that some persons, accused before that monarch of having talked of him too freely, over their cups, pleaded their ebriety in excuse of it, and were generously forgiven. It is observable, that Giraldus particularly mentions the bishop of Worcester, as implicated in this affair; a prelate whose name he would hardly have made use of, without good authority, upon such an occasion.

Another remarkable instance of Henry's clemency and good-nature towards the same prelate is given by Fitzstephen. He tells us, that the bishop, who was son to Robert earl of Gloucester, and had been bred up with the king under his father's tuition, reproached that monarch, in an angry conversation between them, with having acted unkindly towards his brothers and himself, which was an ill requital of the great services done by that nobleman to him and his family; and also with detaining the revenues of the church. These complaints being made in the hearing of many persons, with great freedom and sharpness, a knight of Aquitaine, who was present, and did not know the bishop, enquired, who it was, that spoke to the king in such a manner? And being told, he made answer, *that it was happy for the king the man was a priest; for had he been a soldier, he would not have left that prince two acres of land.* Whereupon another of the court, thinking to recommend himself by it to Henry, chid and threatened the bishop. But the king took his part, and severely reprimanded the officious zeal of the courtier.

P. 158. *The king's good humour seems indeed to have been sometimes too playful, in the eye of the public.* V. Stephanid. in vita

Of this Fitzstephen has given us an extraordinary instance. He tell us that one day, as the king and Becket, his chancellor, were riding together through the streets
of

S. T. Cantuariensis, p. 16, 17,

of London, in cold and stormy weather, the king saw coming towards them a poor old man, in a thin coat, worn to tatters. Would it not be a great charity (said he to the chancellor) to give this naked wretch, who is so needy and infirm, a good warm cloak? Certainly, answered that minister, and you do the duty of a king in turning your eyes and thoughts to such objects. While they were thus talking, the man came near; the king asked him, if he wished to have a good cloak? And turning to the chancellor said; *You shall have the merit of this good deed of charity*: then suddenly laying hold on a fine new scarlet cloak lined with furr, which Becket had on, he tried to pull it from him, and, after some struggle, in which they had both like to have fallen from their horses, prevailed. The poor man had the cloak, and the courtiers laughed, like good courtiers, at the pleasantry of the king.

P. 160. *Before her death she retired to the Nunnery of Godstow, near Oxford, and there she died.—Henry bestowed large revenues on the convent, &c.*

In the Dissertation concerning Fair Rosamond, annexed to the fifth volume of Rapin's History of England, translated by Mr. Tindal, fourth edition, the authority of Nicholas Trivet is quoted to prove, that the Nunnery of Godstow was founded by King John. But that it was founded in the reign of King Stephen, and that the body of Rosamond was deposited there during the life of her lover, King Henry the Second, appears undeniably from several records, that are published by Dugdale, in the first volume of his Monasticon, and in the additions to it annexed to the second. Another mistake made in the Dissertation above mentioned, is the supposing that the bishop of Lincoln, who ordered the body of Rosamond to be removed out of the church, was the famous Grosstest, who held that see under Henry the Third; whereas it was done in the reign of Richard the First, anno dom. 1191, by Hugh, bishop of Lincoln; as we are informed by Roger de Hoveden, who lived at that time. (V. Hoveden, f. 405. b. lin. 20. sub ann. 1191. ann. pars poster.) There is in the Monasticon a fragment from Leland, which says: "Rosamonde's Tomb at Godestowe Nunnery was taken up a late: it is a stone with this inscription, *Tumba Rosemundæ*. Her bones

V. Monast.

t. i. p. 525.

ad 529. Ad-

ditament.

ad t. i, ii. p.

384.

" bones were closed in lede, and, withyn that, bones were
 " closed yn letter [leather] : *when it was opened there*
 " *was a very swete smell came out of it.*"

P. 171. *A late ingenious French writer has very justly observed, that wearing such ensigns on their shields and appropriating them to distinguish particular families, could not have been the general practice in Europe till after the death of William the Conqueror : for, if it had, his son Robert must have known him by his armour, and could not have ignorantly thrown him to the ground, as hath been related in the book prefixed to this history.*

To this observation I will add, that the laborious Herald, Mr. Sandford, says, in his Genealogical History of the Kings and Queens of England, that "*Gules 2 Lions passant regardant* or are the arms assigned to William the Conqueror, as also to Robert duke of Normandy, King William the Second, and King Henry the First, derived (*as tradition tells us*) hereditarily from Rollo, the first duke of Normandy ; who is said to have borne in his escocheon or shield the same charge, affecting, as several other Norman princes did, that sovereign beast, *the lion.*" But then he adds, " I term these arms *attributed, or assigned*, because I cannot find either by monuments, coins, seals, or any contemporary author, that such were in use with these several princes ; but that following ages did assign or fix them upon the Norman line, to distinguish it from the succeeding Plantagenets, that did bear *Gules 3 Lions passant guardant* or (King Henry the Second, the first of that race adding to the Norman arms the lion of Aquitaine of the same metal, in a field of that colour, in the right of Eleanor his wife, heir of that country) and for this cause are they painted for the conqueror, upon the tomb of Queen Elizabeth, in Henry the Seventh's chapel at Westminster, *impaled* with those of Queen Maud of Flanders his wife ; arms *attributed* to the foresters and first earls of Flanders to the time of Robert the Frison : and the arms also of King Henry the First, *impaling* them of Queen Maud of Scotland : *when indeed impalements were not known before the time of Henry the Third, if so soon ; as I shall prove in its proper place.*" Yet the same author

thor shews, that *devices* were used in the time of the conqueror, but taken up and laid down at pleasure. And says, " 'Tis probable the reason why the shields of that age were left blanks, or of one simple colour or metal, was to receive the impress of every fancy, that either pleased the bearer or the painter."

P. 182. *This seems to have been the constant support of the navy: but upon extraordinary occasions danegeld was levied; and, although at the end of that century the name was lost, a like provision was often made, in every age, by our parliaments, for the defence of the British seas and security of the kingdom.*

Rot. Parl. 45 Edw. III. the commons pray, that the franchises of the sea towns and havens may be allowed to them as heretofore; and say, that by default thereof the navy of England is much decayed," &c. These franchises were, the being discharged of armies and defence at land, and of all subsidies granted in parliament. But Mr. St. John, in his second day's argument for ship-money, observes, that these were for ordinary service: *bidage* and *danegeld* for extraordinary. Bracton speaks of *bidages* as not being feudal dues, but among those grants that were *de necessitate et ex communi consensu totius regni introducta*. (V. Bracton, l. ii. p. 37.) Danegeld was a *bidage*, being laid upon hides of land. Fortescue says, that in his time (under Henry the Sixth and Edward the Fourth) the king had the subsidy of tonnage and poundage for the keeping of the sea, and that it ought to be applied to no other purpose.

See Fortescue of absolute and limited Monarchy, p. 44 c. 6.

P. 191. *A knight's fee seems to have been usually composed in those days of two hides of land, or of two hides and a half.*

Sir Henry Spelman says, " that the Normans changed the name of a hide of land, and called it *carue*, a *ploughland*; and, as it seemeth, in erecting and laying forth their knight's-fee, assigned ordinarily two *carues* or *ploughlands* to a knight's-fee. For 'tis noted out of the *Black register* of St. Edmond's-bury, that William the Conqueror gave to Baldwin, then abbot there, eighty ploughlands, from which he might constitute forty knights-fees, *octoginta carucatas terræ, unde*
" *feodaret*

"*feodaret quadraginta milites.*" (V. Spelman's treatise on Feuds and Tenures, c. 27.) But it appears from V. Madox hist. of the Excheq. c. 15. p. 400. the rolls in the reign of Henry the Second, that two knights held five hides of the bishop of Chichester for two knights-fees, and ten hides had been taken from the demesne of that see, to enfeoff four knights, soon after the Norman conquest. By the Red Book of the Exchequer it appears, that in Henry the Second's reign a distinction was made between knight's-fees of *the old* and of *the new feoffment*. The latter were those that had been granted after the death of Henry the First; and some of them, being smaller than the former, paid only twelve shillings for scutage, when the former paid twenty. But others of them were charged at the same rate to those payments, and must therefore have been nearly of the same value. I likewise observe in the rolls, that several barons, who had fees of *the old feoffment*, were also possessors of some of *the new feoffment*; and, upon the whole, V. Mag. Rot. 14 Hen. II. Rot. 6. de Auxilio Matildæ filie regis Earl of Warwick and William de Albini. I see no reason to believe, that a *distinct and inferior order of barons* was constituted by these tenures, as some have thought.

P. 191. Sir H. Spelman says, that a *mesne tenant*, who had more than a single knight's-fee was called a *vassalor*, which, he thinks, was a degree above knights: yet we generally find that name applied to any vassal, who held a military fief of a tenant in chief of the crown.

Many proofs might be given of this from books and records of that age. Mr. Selden says, in his *Titles of Honour*, part II. c. v. sect. xvii. "There were two kinds of knight's-fees (as to this day also there are); those that were held in chief of the king; and those that were held by a mesne tenure, called also anciently *vassories*. Of the first kind only, these baronies (as also the baronies or honours of earls) were made; and they, by *subinfeudation* for the most part, made the second. And by themselves and others provided at their own charge, or by the tenants (whom they made by such subinfeudation), they performed the services reserved by the king. As, if the king gave twenty knights-fees to be held in chief, or lands to be held by the service of twenty knights or men at arms (which was the same kind of gift), if *the patentee* infeoffed others of part to be held under him (for example) by

"the

NOTES TO THE SECOND BOOK OF

“ the service of fifteen knights, then the king was served,
 “ at the charge of his baron *the patentee*, with five
 “ knights ; and the other fifteen were supplied by those
 “ that held the rest by *mesne tenures* ; yet so, that, if
 “ they failed in their service, the baron was to pay escu-
 “ age, according to their number, to the king, and to
 “ have his like remedy against them.” Concerning escu-
 age much is said in other places of this word ; but I would
 observe here, that, in using the word *patentee*, Mr. Selden
 could not mean, in the times when this military policy was
 established, there were any barons *by patent*, but it is signi-
 ficant of the terms on which the lands were granted.

P. 191. *but these instances were extraordinary ; the far
 greater number of the military tenants in chief having
 many subvassals.*

See note to
 p. 159.

The learned Mr. Justice Wright has well observed, in
 his Introduction to the law of tenures, that, since it is clear
 that subinfeudations were warranted by the feudal law, and
 that they were an original and necessary branch of the feudal
 policy itself, the doubt whether the king's tenants had a
 liberty of disposing of any of their lands to hold of them-
 selves could not be very ancient : and he argues strongly
 to shew, that the first commencement of it was not earlier
 than the time of Henry the Third, from the statute 34
 Edw. III. cap. 15. which makes good all such alienations
 (or subinfeudations) made by those who held of the king's
great grandfather, or of other kings before him, expressly
 saving his prerogative of the time of his grandfather, fa-
 ther, and of his own time.

It will be well worth the reader's while to see all that
 is said by the above mentioned writer concerning the re-
 straint laid by Magna Charta, c. 32. on the practice of
 alienating so much of a fief, as not to leave enough for
 the performance of the service due to the lord from his
 vassal, and afterwards by the statutes, *Quia emptores ter-
 rarum*, and *De prerogativa regis*. I will only observe,
 that, though the power of *subinfeudation* seems to have
 been consonant to the original policy of fiefs, without any
 distinction between those who held of the king, or of
 other inferior lords, yet the limitation of it, in all cases,
 within the bounds prescribed in those laws, for the secu-
 rity of the service on which the tenure was founded, ap-
 pears also to have been a necessary and inherent condition
 of

of all such grants, the departure from which, if not checked, would have been finally destructive to the whole feudal system.

P. 193. *But, in the case of invasions, the common law of the land continued undoubtedly to oblige, not only those tenants, but all the other freeholders, to assist in repelling and driving out the invaders.*

The limitation expressed in the statute of 1 Edw. III. viz. *that no man be compelled to go out of his shire, but where necessity warranteth and sudden coming of strange enemies into the realm*, I take to have been always the law of England. The statute concludes with a reference to the ancient practice of that law, *And then it shall be done as hath been used in times past for the defence of the realm.* The first clause of the same act, viz. *The king wills that no man from henceforth shall be charged to arm himself otherwise than he was wont in the time of his progenitors, kings of England*, refers also to ancient usage, and to the assise of arms in the reign of King Henry the Second, which is again referred to and confirmed by the statute of Winchester in the 13 Edw. I. c. vi.

Ibid. During the government of the Saxons (if we may believe what is said by the compiler of some laws ascribed to Edward the Confessor) the militia of every county was commanded by an annual officer called Heretoch, who was chosen into that office by all the freeholders, in the folkmoete, or county court.

The authority of that collection of laws, in which this passage occurs, I think indeed very slight; but what makes me believe, that the compiler of it did not err in this point, is its agreement with the ancient German laws, which Sir H. Spelman takes notice of, and seems on that account to consider it as authentick. (V. Spelman's Gloss. p. 288. DE HERETOCHIIS.)

Ibid. Sir H. Spelman supposes, that, after the Normans came in, this command devolved to the earl. And there is great reason to think, that the military power of every county was principally in the earl, during the times of which I write, though it was occasionally exercised by the sheriff, or viscount.

Spelman's

Spelman's words here referred to are in his Glossary under COMES, "Quo edoctus exemplo Gulielmus I, "novi utique apud Anglos regni fundamenta ponens, "commilitones suos feodalibus exornavit dignitatibus, "forte etiam audioribus quam ævo Saxonum. *Nam "cessisse jam videtur manus Heretochii comitatus in "manu ipsius comitis.*" That the earls had the chief command of the militia of the county in the reign of William the First, and till after the decease of Henry the Second, appears, I think, from many clear historical proofs: and in all the accounts of those times I meet with no trace of any officer *elected* to such a command.

Ibid. But, whether even the Saxon Heretoch was not subordinate to the earl in his military functions, appears to me very doubtful.

Several reasons induce me to this doubt, and among others
 V. Fl. Wig. this passage in Florence of Worcester, "Talia geri in
 sub ann. "suo comitatu Godwinus graviter ferens, nimiaque com-
 1054. "motus ira, *de toto suo comitatu*, scilicet de Cantia &c.
 "et filius ejus primogenitus Swanus *de suo* &c. alterque
 "filius Haraldus *de suo* &c. *innumerabilem congregave-*
 "runt exercitum." From hence it should seem, that
 the power of the earls over the military force, in their
 several counties, was, in the Saxon times, superior to that
 of the *Heretoch* elected by the people. Perhaps that
 officer was no more than lieutenant under the earl. But
 indeed (to use the words of the learned Mr. Selden)
 "most parts of the state of the Saxon government are so
 "obscure, that we can see only steps or torn reliques
 "of them, rather than so much as might give a full sa-
 "tisfaction."

Titles of
 Honour, c.
 5. part ii.

P. 196. *Archers were drawn from the yeomanry, and seem to have served on foot, as attendants on the vassals who held by knight's-service, and at their charge; or, sometimes, under the pay and at the charge of the king.*

See Cotton's
 abridgement
 of the re-
 cords in the
 Tower, p.
 21. 13 E.
 III. & p.
 281. 7 R. II.
 I read of no archers on horseback in the age of which I write, unless they were comprehended under the term *servientes*, some of which were light horsemen: but in Edward the third's reign mention is made in a roll of parliament of two hundred archers on horseback; and, in the seventh year of Richard the Second, the bishop of Norwich

Norwich offered to serve the king abroad with 3000 men at arms, and 2500 archers, *well horsed and appointed*. And when Lionel earl of Clarence went with an army into Ireland, he carried with him thither many archers on horseback, whose pay was six-pence a man *per diem*, the squires in the same army being rated at one shilling a man *per diem*, the knights, at two shillings, and the bannerets at four shillings. There were likewise some archers at four-pence *per diem*, who, I presume, served on foot. The earl of Ormonde had under him, besides his knights and squires, twenty *boblers* armed, and twenty not armed; the pay of the former being six-pence a piece *per diem*, and of the latter four-pence. These *boblers* were Irish horsemen, so called because they served on *bobbies*. How much the strength of the nation was then thought to depend on the skill and valour of its archers appears from a letter of the duke of Guelderland to King Richard the Second, in which he uses this expression. "The tried valour of your people, and *the sharpness of their victorious arrows*, have so far advanced the fame of your magnanimous nation above any of the West, that terror and dread cannot but seize your adversaries." In Henry the Sixth's reign the commons granted to the king *twenty thousand archers* for half a year in his service. And Fortescue says, in his treatise of Absolute and limited monarchy, written in the reign of Edward the Fourth, *that the might of the realm of England most standeth upon archers*.

See Cotton's
abridgement
of the re-
cords in the
Tower, p.
560. 31 H.
VI.

C. 12.

P. 197. *Father Daniel observes, that this establishment passed from the demesne of the kings of France into those of his greatest vassals, the dukes of Burgundy, the dukes of Normandy, and several others.*

It must not from hence be supposed (as it has been by some writers) that, till these privileges were granted by Louis le Gros, none had been enjoyed by any cities in France or Normandy. Ordericus Vitalis takes notice, that in the year eleven hundred and six King Henry the First, being favourably received by the citizens of Rouen, *restored the ancient dignities of that city.* "Rex siqui-

L. xi. p. 821,
822. apud
Duchefne.

"dem cum duce Rotomagum adiit, et à civibus favorabiliter acceptus paternas leges renovavit, *pristinæque urbis dignitates restoravit.*" The same author says of the same king, that, in a treaty with his brother, the

Ibid. p. 788.
sub ann.
1101.

duke of Normandy, he retained only the town and castle of Dumfront in that dutchy, because he had promised the citizens upon oath, that he would never separate them from his demefnes, *nor change their laws and customs* : “ *Quia Damfrontanis, quando illum intromiserunt, jurejurando pepigerat, quod nunquam eos de manu sua projiceret, nec leges eorum vel consuetudines mutaret.*” These laws and customs must have been *privileges* granted to the townsmen, which others did not enjoy ; as they were so desirous to prevent their being changed. The enfranchisements of *serfs* in towns, and the establishing therein of a new military power independent of the nobility, were indeed *innovations*, which took their rise from the institutions of Louis le Gros, and came from France into Normandy, and even into England. Some corporations which did not before exist, might be also *created* at that time ; but many others, I presume, were only *new-modelled*. This seems to have been the case of the city of Rouen at still a later period. For Duchesne has given us a charter, which directs in what manner a mayor shall be elected, and establishes other regulations for the government of that city, but with a reference to the constitution of a former community upon a different model. It is without date, but seems to be from Philip Augustus, by some of the terms therein used. (See Duchesne H. Norm. p. 1066.) It is certain, that in England many cities and towns were *bodies corporate* and *communities* long before the alteration introduced into France by the charters of Louis le Gros.

P. 199. *But these the courses of elder times were about this time much altered, and the king, for the most part, was supplied in his wars by contract with the nobility and gentry, to serve him with so many men, and so long and at such a rate, as he and they by indenture accorded.*

Sir Robert Cotton seems to date this alteration from the reign of Richard the Second ; but we find, by the See Cotton's records of parliament, that, in the thirteenth year of Edward the Third, seven thousand four hundred men at abridgement of the records in the Tower, p. 11. 13 E. III. arms, two hundred archers on horseback, and two thousand halberters, were set out by certain nobles of the counties of York, Nottingham, Derby, Lancaster, and Cumberland, by particular rate.

Ibid.

Ibid. Indeed the practice varied much in different ages; though it is plain, from our law books, that the principle of knight-service, due, by the nature of the feudal policy, from all the possessors of military tenures, remained much the same, from the reign of William the First to that of Henry the Seventh; nay, even till Charles the Second abolished those tenures.

Among the variations from the custom of the ancient feudal tenures we may reckon a clause in the statute of the eighteenth of Edward the Third, which says, that men of arms, hoblers, and archers, *chosen* to go in the king's service out of England, shall be *at the king's wages*, from the day that they depart out of the counties *where they were chosen*, till they return. These, I apprehend, were not men, who served on the ancient plan, according to the duty of their tenures; but were raised by the new practice of agreements and covenants between the king and his barons, or tenants in chief by knight-service, and picked from the several counties. They were not therefore bound, as under the ancient establishment to serve forty days at their own charges. Yet no changes in the mode produced any in the nature of feudal military service, on which foundation and principle all these contracts were made. By the act of the twenty-fifth of Edward the Third, "it is accorded and assented, *that no man shall be constrained to find men of arms, hoblers, or archers, other than those which hold by such services, if it be not by common assent and grant made in parliament:*" which is confirmed by a statute of the fourth of Henry the Fourth, with the following provisor, "so that the lords nor any other, that have lands or possessions of the country of Wales, or in the marches thereof, shall in no wise be excused of their service and *devoirs*, due of their said lands and possessions, nor of any other *devoirs* or things, whereto they or any of them be bound to our lord the king; though that the same lords and other have other lands and possessions within the realm of England. And that the lords, or other, of what estate or condition that they be, which hold by *escuage* or other service due to the king, any lands or possessions within the said realm, be in no wise excused to do their services and *devoirs*, due of their said lands or possessions. And that the lords, knights, esquires, nor other persons, of what estate or condition they be, which hold

“ and have of the grant, or confirmation of our lord the king, lands, possessions, fees, annuities, pensions, or other yearly profits, be not excused to do their service to our lord the king in such manner as they are bounden because of the lands, &c.” which was not repealed till the act of the twelfth of Charles the Second.

P. 203. *The treatise ascribed to Glanville &c. tells us, that the relief of a knight's-fee was then fixed at a hundred shillings, and of lands held in socage at a year's value, by the custom of the kingdom; but that, with regard to baronies and to serjeanties, there was no determinate rule of law, those who held by such tenures satisfying the king, for the relief due to him from them, at his discretion.*

See this charter in the Appendix to the first volume.

This disagrees with the charter of Henry the First, which Henry the Second had confirmed: for there it is said, that, upon the death of a baron, or any other tenant who held in chief of the crown, his heir shall not redeem his land, as had been done in the reign of William the Second, but shall only pay a just and lawful relief; words which evidently imply a known rule of law to direct and ascertain the payment. It is likewise declared, in the most authentic original manuscripts of King John's

See the charter in Blackstone's edition from the Cotton and Durham manuscripts. V. Coutum. de Norm.

Magna Charta, that one hundred pounds shall be paid, on the death of a baron, by the heir, as the ancient relief. We also find by the Norman law-book called *Le Coutumier*, that this was agreeable to the practice in Normandy, from whence these feudal payments were derived to the English. How then did it happen, that, with regard to the reliefs of the baronies and serjeanties, the course of law, in the reign of Henry the Second, was different from that practice, and from the charter of his grandfather, which he had confirmed?

The best solution I can give of this difficulty is suggested to me by observing, that, from the records which Mr. Madox has given us in his History of the Exchequer, it seems that Henry the Second took no more for any barony than one hundred marks, which being less than the relief referred to in the charter, the barons could have no reason to complain of his departing from that rule in this point. Another reason, which is mentioned in another part of this book, might induce them to leave it discretionary in the crown, so long as that discretion was favourably used.

See Hist. of the Excheq. c. 10.

See p. 213.

used. But the abuse, that was made of their confidence by King John, may have obliged them to deny it to him and his successors. For many other instances are to be found in the history of the English Constitution, that ancient laws, or customs, which, in the reigns of good princes, had given way to beneficent acts of prerogative, have been claimed and restored, in after times, as necessary bulwarks to the people against oppression. The words of

King John's charter, as they stand in the two Cottonian manuscripts and in that of the church of Sarum, by which Mr. Tyrrel corrected Matthew Paris's copy, are these.

“ Siquis comitum vel baronum nostrorum, sive aliorum

“ tenentium de nobis in capite per servitium militare,

“ mortuus fuerit, et cum decesserit hæres suus plenæ

“ ætatis fuerit, et relevium debeat, habeat hæreditatem

“ suam *per antiquum relevium*; scilicet hæres vel hære-

“ des comitis de baronia, comitis integra, per centum *libras*;

“ hæres vel hæredes baronis, de baronia integra, per cen-

“ tum *libras*; hæres vel hæredes militis, de feodo militis

“ integro, per centum solidos *ad plus*; et qui minus de-

“ buerit, minus det, secundum antiquam consuetudinem

“ feodorum.” The two Cottonian manuscripts are the

only originals of this charter now extant, that of Sarum

being missing. But the copy of it, which is entered in

the Red Book of the Exchequer, agrees with these, only

instead of *libras* it has *libram* in the section concerning

the relief for a barony; which is plainly an error. The

charter of the first year of Henry the Third, which Dr.

Blackstone has printed from the only original extant,

viz. that in the archives of the cathedral at Durham,

agrees entirely with King John's in the clause here re-

cited, and so does the entry of it in the Red Book of the

Exchequer at Dublin, only that, instead of the words *de*

baronia integra, it has *de baronia baronis integra*, but the

relief is the same, viz. *centum libras*.

The second charter of Henry the Third granted in the

year 1217, which Dr. Blackstone has printed from the

original in the Bodleian library, the only one extant, has

the same clause word for word; and so has the Talbot

manuscript, from which Dr. Blackstone has published

the charter of the ninth year of that king, and also the

Durham manuscript, which the Doctor calls *an original*

of inestimable value. But the entry made in the ancient

book at Guildhall of the charter of the year 1217, instead

See Pine's
Engraving
and Magna
Carta
Johan. in
Dr. Black-
stone's
edition.
See also
Tyrrel's
Append. to
his third
Volume.

See these
charters in
Blackstone's
edition.

History of
the Exche-
quer, c. x.
p. 220.

See Titles of
Honour, c. v.
par. ii. sect.
ii.

of *libras* has *marcas*, in the section which relates to the relief of a barony; and the same reading is found in all the charters of *inspeximus* of the twenty fifth and twenty eighth of Edward the First, which have been collated by Dr. Blackstone with the Talbot manuscript of the charter of the ninth year of Henry the Third, and also with that of Durham. What gives some authority to this alteration of pounds to marks is a record which Mr. Madox has cited, and by which it appears, that, in the thirty fifth year of King Edward the First, John de Ratynden, cousin and heir of Alice Mucegrofs, paid xli. li s. li d. ob. q. relief, for all the lands which Alice held of the king *in capite*, viz. for the sixth part of the barony which Hugh Dyve formerly held. In the twenty first year of King Edward I, Alice was charged with xxv marks relief for the said sixth part of a barony; the relief for a whole barony being then charged at one hundred pounds. But now, by the *Magna Carta regis de libertatibus Angliæ* (which charter the king by his writ, *quod est inter communia de anno xxix*, commands to be observed in all points), the king would take but one hundred marks for the relief of a barony: and therefore John de Ratynden is charged for the same portion of the said barony at the rate of a hundred marks, *et non de tanta summa pecuniæ*, as Alice was charged at, viz. a hundred pounds. Mr. Selden also cites in his Titles of Honour, a roll of the sixth year of Edward the Third, by which it appears, that, in the twelfth year of Edward the First, Humfrey de Bohun was charged with fifty marks for a third part of the fiefs which had belonged to Ada de Portu, and with fifty marks for a third part of the honour of Brehnoc, which was a greater sum than was paid by John de Bohun to Edward the Third, "*eo quod relevium prædictum oneratum fuit tanquam pro tertia parte prædictarum baroniarum ante consecutionem Magnæ Cartæ, de libertatibus Angliæ, quo tempore relevium pro baronia assessum fuit ad c libras, et post consecutionem ejusdem Cartæ ad c marcas tantum, juxta quarum c marcarum ratam prædictus Johannes de Bohun oneratur superius de relevio dicti avi sui pro partibus dictarum baroniarum, &c.*" In this record the words *ante et post consecutionem Magnæ Cartæ de libertatibus Angliæ*, can mean nothing but *before and after the confirmation*

firmation of the great charter of Henry the Third, which (as it is expressed in the other record cited by Mr. Madox) the king, by his writ *quod est inter communia de anno xxix*, commands to be observed in all points. For by this record it appears, that, in the twelfth, and by the other, that, in the twenty first year of Edward the First, the relief for a barony was *a hundred pounds*. The alteration therefore was made by the charters of *inspeximus*, but how they came to vary from the original charter of the ninth of Henry the Third, so much to the prejudice of the royal revenue, it is hard to conceive. On the other hand, many reasons forbid one to suppose that it stood so in that charter. For, besides that the two original manuscripts, cited before, have it *libras*, the same reading is found in the authentic entry of it in the Red Book of the Exchequer at Westminster: and it likewise appears by the rolls, that in the very year when the said charter was granted, viz. the ninth of Henry the Third, Walter de Clyfford was charged with a hundred *pounds* for his relief *as for a barony*. I have shewn before that the authentic transcripts of all the former charters have *libras*, not *marcas*. And if in King John's time the *ancient relief* was a hundred *pounds*, it was so in Henry the Third's and Edward the First's. But further, it is evident by the great roll of the tenth year of Richard the First, that a hundred *pounds* was then thought the *reasonable relief* for a barony. Edward the First must have been therefore deceived in this matter by those who made the charters of *inspeximus* for him. There being no stops in the manuscripts, it is hard to determine, whether the words *ad plus* after *centum solidos* relate only to *them*, or to the preceding reliefs of earldoms and baronies in the same clause; but I rather think that they only belong to the *centum solidos*.

See Madox's
History of
the Exche-
quer, c. x.
p. 218.

By the laws of William the Conqueror, the reliefs of earls, barons, and vassals, are to be only their horses and arms, like the *Heriots* of the Saxons: which seems to have been enjoined by that prince to accommodate the Norman custom in this respect to the Saxon; forasmuch, as many of those laws are Edward the Confessor's revived and confirmed. (See Ingulph. and Wilkins Leg. Gul. Conq. p. 22, 23, 24.) But it is observable, that the number of horses and arms required thereby as the lawful relief for an earl, is double to that for a baron, and

NOTES TO THE SECOND BOOK OF

that for a baron is double to a vavalor's: whereas it has been shewn, that the charters make the relief for a baron the same with that for an earl (or but a third less, even if we read *marks* instead of *pounds*), and allow no more than a hundred shillings for any knight's-fee, which falls very short of one half of the baron's relief. I therefore presume that those laws were repealed, and that *the just and lawful relief* in the charter of Henry the First did not refer to what they had established, but to the Norman relief, which was the same as the subsequent charters declare.

C. x. p. 220. Mr. Madox takes notice, in his History of the Exchequer, that, although baronies differed much in the number of fees whereof they consisted, the relief of each was the same: which proves, that it could not be a fourth part of the value of the annual income arising out of the barony; as some have supposed.

According to the author of the Dialogue de Scaccario, the relief of a hundred shillings was only fixed in his time (under King Henry the Second) for knight's-fees held of the barons, or escheated to the king; not for those that were immediately held of the crown. But no such distinction is made by Glanville, and in the charters of King John and Henry the Third it is said, "that the heir or heirs of an entire knight's-fee, *which was held in chief of the king*, should pay the ancient relief, which was *but a hundred shillings at most*, and that he who owed less should pay less, according to the ancient custom of *fiefs*."

See the charters of Blackstone's edition.

P. 208. He tells us also, that it was a duty incumbent on the lord, to offer a proper match to a female ward in his custody, as soon as she was of an age to marry, and also to pay her a reasonable portion. These regulations, and the profit given, by a feudal custom in these times, to the king and inferior lords, on the marriage of their vassals, conduced to promote propagation, and the increase of the people; for it is probable that few remained long unmarried.

The duty of the lord to offer a proper match to a female ward in his custody is enforced by the statute of Westminster, in the third of Edward the First, c. 22. which says, *that if the lord, to whom the marriage be-
longeth,*

longeth, will not marry heirs female, after they have accomplished the age of fourteen years, but for covetise of the land will keep them unmarried, he shall not keep, by reason of marriage, the lands of such heirs female more than two years after the term of the said fourteen years. And if he do not marry them within the said two years, then shall they have an action to recover their inheritance quite, without giving any thing for their wardship or their marriage. And if they, of malice, or by evil counsel, will not be married by their chief lords (where they shall not be disparaged) then their lords may hold their land and inheritance until they have accomplished the age of an heir male, to wit, of one and twenty years, and further, until they have taken the value of the marriage. The foundation of this power, given to the lords of heirs female refusing to marry where no disparagement would ensue, was the profit that such lords would have made of their marriage; and the reason of allowing such profit was the loss sustained by their lords in giving up their lands, on the marriage of the wards, before the wardship was determined. With regard to heirs male, it had before been declared by the statute of Merton; "that if an heir (of what age C. vii. "foever he be) will not marry at the request of his lord, "he shall not be compelled thereto; but when he "cometh to full age, he shall give to his lord and pay "him as much as any would have given him for the marriage before the receipt of his land; and that, whether "he will marry himself or not: for the marriage of him "that is within age of mere right pertaineth to the lord "of the fee."

The same statute also said, "that if an heir, being C. vi. "fourteen years old, or above, unto his full age, should "marry without licence of his lord to defraud him of the "marriage, and his lord offer him reasonable and convenient marriage, without disparagement, then his lord "shall hold his land beyond the term of his age, that is "to say, of one and twenty years, so long that he may "receive the double value of the marriage after the estimation of lawful men, or after as it hath been offered "before, without fraud or collusion, and after as it may "be proved in the king's court."

From hence it is evident, that what may be concluded, from the silence of Glanville, not to have been law in the reign of Henry the Second, was now become law, namely, that

NOTES TO THE SECOND BOOK OF

that the marriage of a male ward, within age, of mere right pertained to the lord of the fee; and was so far considered as a profit due to him, that, although he could not compel his ward to marry, yet he might demand as much as any would have given him for the marriage, and the ward was to pay it to him, whether he married or not. It appears also, that, when the statute of Merton was made, the value of such marriage might be legally estimated; and it was declared, that the penalty of defrauding the lord thereof, by a marriage without his consent, if a reasonable and convenient one was offered by him, should be double that value. But if a female heir was married, though with her father's consent, without that of her lord, the penalty was a forfeiture of the whole fief for ever, *secundum jus et consuetudinem regni*, says Glanville, l. vii. c. 12. which still continued to be law under Henry the Third.

P. 209. *Glanville takes notice of only three kinds of aids, which the feudal lord had a right to demand from his vassals, &c.*

There is a remarkable conformity between the ideas of ancient Rome, on the reciprocal duties of *patrons* and *clients*, and those of the feudal law on the reciprocal duties of *lords* and *vassals*. I cannot better shew this than by repeating the words of the learned Dr. Chapman, in his Essay on the Roman senate. He says (p. 10, 11.) that, by the institutions of that commonwealth, "the patrons were obliged to assist their clients *gratis* with their advice and credit upon all occasions, and defend their persons and properties in all civil and criminal prosecutions: in return for which, the clients were directed to contribute to the fortunes of their patron's daughters, if their own circumstances did not enable them to marry them suitable to their birth; to their ransom, or that of their children, who happened to be taken by the enemy; to the payment of any fines, or costs of suit, they might be cast in; or the expence incurred by canvassing for any public office." Agreeable to these in a great degree are the obligations of *defence, protection, and warranty*, on the part of the feudal lords, and the *aids* mentioned by Glanville in the passage referred to above, together with the *aid of ransom*, on the part of the feudal vassals. Yet it must be observed, that the whole system of

of feudal duties arose from the tenure of lands ; whereas those established between the Roman patrons and their clients were neither founded upon any territorial connexion, nor were of a military nature, as all feuds originally were ; nor was any jurisdiction inherent in the patrons over their clients, as in the feudal lords over their vassals ; nor was any oath of fealty due from the clients to their patrons, as from the feudal vassals to their lords. On which accounts the learned Craig has justly re-
jected the notion of the policy of feuds being derived from these institutions.

V. Craig, De
Jur. Feuda-
li, l. i. tit. 5.
c. 6.

P. 209. *Another was to contribute towards his expence in making his eldest son a knight, &c.*

According to Britton, no lord could demand this aid of his tenant, if he were not himself a knight.

Chap. des
prises des
avres.

P. 211. *which ceremonies denoted (according to Bracton) on the part of the lord, protection, defence, and warranty ; &c.*

Warranty signifies an obligation on the feoffer to warrant the seisin or possession of the feoffee in his land : or, if he could not maintain it, to make him satisfaction by rendering to the value of the fee if it was evicted. (See Wright on Tenures, p. 153, 154.)

Ibid. After the vassal had said this, he was to receive a kiss from his lord, and then rising up was to take the oath of fealty in the following words : " Hear this, my lord, &c.

Lord Hale says, in his History of the Pleas of the Crown, c. x. p. 62, 63. " The oath of fidelity or fealty " is of two kinds, that which is due by tenure, whether " of the king or mesne lords, which is *ratione feodi vel vassallagii*, and hath a special relation to the lands so " held, and is set down by Lyttelton, c. 19. *Hear you, my lord, &c.* Touching this feudal fealty, or fealty " by reason of tenure, I have not much to do in this " place. The other kind of fealty is that oath, which " is called *fidelitas ligea*, or *alligiance*, and performed " only to a sovereign prince, and therefore regularly " ought to be performed by all men above the age of " twelve years, whether they hold any lands or not. The " *teno*

NOTES TO THE SECOND BOOK OF

“ tenor of this oath, according to Fleta, l. iii. c. 16. *scd.*
 “ 22. runs thus: *Hoc auditis, circumstantes, quod fidem*
 “ *regi portabo de vita et membris, et terreno bonore, et*
 “ *arma contra ipsum non portabo: Sic me Deus,*” &c.
 Thus Lord Hale — but I would observe hereupon, that
 I find no proof that the words *et arma contra ipsum non*
portabo were in any oath of allegiance till after the times
 of King Henry the Second. His lordship goes on,
 “ According to Britton, who wrote about the fifth of
 “ Edward the First, c. 29. (which is also mentioned in
 “ Calvin’s case, 7 Co. Rep. 6.) the common form of the
 “ oath of allegiance taken in Leets, runs thus: *Ceo oyez*
 “ *vous, N. bailife, que jeo A de ceo jour en avant serray*
 “ *feal et leal à notre seigniour E. roy d’Angleterre et a*
 “ *ses beires, et foy et lealie luy porterai de vie et de*
 “ *nombre, et de terrien bonour, et que jeo lour mal ne*
 “ *lour damage ne savorai ne ovray, que jeo ne le defendray*
 “ *à mon poyer, si moy ayde dieu et ses saynts.* This is the
 “ form of the ancient oath of allegiance or fidelity to the
 “ king, and as it is used at this day, &c. It is compre-
 “ hensive of the whole duty of a subject to his prince,
 “ and therefore hath obtained for above six hundred years
 “ in this kingdom.” For the better explaining of the
 difference between the two kinds of fealty, I will suppose,
 that, in the times when the feudal law was in its vigour,
 a subject of England, who had held a fief of the king,
 should, by some offence or defect of his duty as a vassal,
 have incurred a forfeiture of that fief, and have actually
 lost it; in that case it is evident, the feudal connection
 between him and his sovereign would have ceased and
 determined; but he would still have been under the bond
 of fealty and allegiance, which he owed to the king as
 his subject.

P. 212. *Homage done to the king was called lige bom-*
age, &c.

I do not mean to assert (as some very eminent writers on
 feuds have done), that there was no other *lige bomage*
 than what was done to the king. For the contrary ap-
 pears by many ancient records, particularly by the charter
 containing the agreement between King Stephen and
 Henry Plantagenet, then duke of Normandy, in which
 it is said by the former, “ *Comites etiam et barones mei*
 “ *ligium bomagium duci fecerunt, salva mea fidelitate,*
 “ *quam*

“*quam diu vixero et regnum tenebo.*” Which words also demonstrate that there might be a *reserve* or *saving* in lige homage. A late French historian mentions a charter, in which the Sire d’Apremont engages to do *lige homage* to the king of France for his land of Briente sur Meuse, and promises to *serve him against all men, except the bishop of Metz*. The same author says, on the authority of the *Affises of Jerusalem*, that, in the case of a war between two liege lords of the same vassal, such vassal was bound to aid and succour him to whom he first had engaged his allegiance, *because* (say the *Affises*) *he could not do homage to the second, but with a saving of his fealty to the first.*

P: 214. *We are assured by contemporary writers of the greatest authority, that, in the reign of William the Conqueror, lige homage was done, and fealty was sworn to that king, not only by his own immediate tenants, but all the considerable subvassals: &c.*

Ingulphus says, “*Reversusque in Angliam (Rex Wil-* p. 79.

“*helmus scilicet) apud Londonias hominum sibi facere*

“*et contra omnes homines fidelitatem jurare omnem Angliæ*

“*incolam imperans totam terram descripsit,*” &c. What

we are to understand by *omnem Angliæ incolam*, is ex-

plained by other historians. Florence of Worcester and

Simeon of Durham say, “*In hebdomadâ Pentecostes*

“*suum filium Henric. ap. Westm. ubi curiam suam te-*

“*nuit armis militaribus honoravit. Nec multo post man-*

“*davit ut archiepiscopi, episcopi, abbates, comites,*

“*barones, cum suis militibus, die cal. Aug. sibi occurre-*

“*rint Saresburie. Quo cum venissent, milites illorum*

“*sibi fidelitatem contra omnes homines jurare coegit.*”

And Hoveden has the same words; only, after *barones*,

he adds *vice-comites*. The Saxon chronicle also says,

speaking of the same assembly held at Salisbury, by

William the First, “*Ubi ei obviam venerunt ejus pro-*

“*ceres, et omnes prædia tenentes, quotquot essent notæ*

“*melioris per totam Angliam bujus viri servi fuerunt,*

“*omnesque se illi subdidere, ejusque facti sunt vassalli,*

“*ac ei fidelitatis juramentum præstiterunt se contra alios*

“*quoscumque illi fidos futuros.*” Henry of Huntington

says, “*Wilhelmus rex fortis, anno decimo nono regni*

“*sui, cum de more tenuisset curiam suam in natali apud*

“*Glocestre, ad Pascha apud Wincestre, ad Pentecosten*

“*apud*

Abbe Velli
Hisor. de
France, t.
vi. p. 219.
Louis IX.

Flor.
Wig. & S.
Dunc. sub
ann. 1086.

V. Hoveden
Ann. sub
ann. 1086.

Chron. Sax.
sub ann.
1085.

V. Hun-
tingd. Hisor.
f. 212. sub
ann. Wil. I.

NOTES TO THE SECOND BOOK OF

" apud Londoniam, Henricum filium suum juniorem
 " virilibus induit armis. *Deinde accipiens hominum om-*
nium terrariorum Angliæ, cujuscunque feudi essent;
 " *juramentum etiam fidelitatis recipere non distulit.*" We
 are therefore to understand *omnem Angliæ incolam* in In-
 gulphus to mean all the military tenants of the barons,
 and all the considerable landholders in England, of what-
 ever lord they held their fiefs. For, though Ingulphus
 mentions London as the place where this was done, and
 Henry of Huntington seems to confirm that account, I
 make no doubt it was at Salisbury, as is affirmed by the
 other historians above mentioned, and that he and Henry
 of Huntington have confounded that assembly with the
curia held at London a little before.

Ibid. It also appears from the words of William of Malm-
 bury, that, homage was done and fealty sworn to the
 heir apparent of the crown, in the reign of Henry the
 First, by all the freemen of England and Normandy,
 of whatever order or rank they were, and to whatever
 lord they were vassals."

V. Malmfb.
 de H. l. i. v.
 f. 93.

The words of Malmbury are these: "*Filium habuit*
 Rex Hen. ex Matilde, nomine Wilhelmum, *deleci spe*
et ingenti curâ in successionem educatum et pervectum.
Nam et ei, vix dum XII annorum esset, omnes liberi
homines Angliæ et Normanniæ, cujuscunque ordinis et
dignitatis, cujuscunque domini fideles, manibus et sacra-
mento se dedere coacti sunt." Certainly these words,
 like the *omnem Angliæ incolam*, in the citation from
 Ingulphus given in the last note, must not be construed
 too literally, but mean the *omnes prædia tenentes*, *quot-*
quot essent nota melioris, the most considerable landholders
 of every order and degree. For the numbers of the *liberi*
homines Angliæ et Normanniæ were too great to be
 brought all together, in either country, without ex-
 treme inconvenience; and the performance of the cere-
 monies of doing homage, and swearing fealty, would have
 taken up too much time, and been too fatiguing to the
 prince who received it from them.

Ibid. Glanville tells us, that women could take the oath of
 fealty, but could not do homage; and that, if they
 were married, their husbands were to do homage for
 them.

Sir

Sir Thomas Lyttelton says, in his Book upon Tenures, L. ii. sect. 87.
 "that if a woman sole shall do homage, she shall not
 "say, *I become your woman*; for it is not fitting that a
 "woman should say, *that she will become a woman to any*
 "man but her husband, when she is married: but she
 "shall say, *I do to you homage, and to you shall be faith-*
 "ful and true," &c. Upon which Lord Coke remarks,
 "that when Glanville says, *a woman shall not do homage,*
 "he is to be understood, that she shall not do compleat
 "*homage.*" But I should rather believe, that, in Glan-
 ville's time, single women did none, and that the alteration
 in the form, which is mentioned by Lyttelton, was an
 expedient found afterwards, to avoid the objection of an
 indecency in their homage; as it was also in the case of
 ecclesiasticks. From the obligation laid on the husband to do
 homage for the wife it naturally followed, that the barony
 of a wife, as well as every other fief requiring homage,
 was, in effect, made over to the husband; and therefore
 in those days many barons came to parliament in right of
 their wives, and by virtue of their marriage were ac-
 counted peers of the realm. It has been observed in this
 History, that the same notion extended to dukedoms and
 principalities in many parts of the continent.

P. 218. *And it was a general maxim of the feudal law, that a forfeiture of the property of the lord in the fief, and of all his dominion over his vassal, was as necessary an effect of any great breach or neglect of the duty which he owed to the vassal, as a forfeiture of the fief was of a similar crime or neglect in the vassal.*

The learned Craig, in his excellent book on the Feudal Law, has these words: "*De dominorum autem offensâ hæc generalis regula observanda est, ubicunque vassallus ex suâ offensâ, sive delicto in dominum, feudo privatur, e regione dominus, si idem in vassallum deliquerit, directo dominio privatur, etiamsi dominus offensum commiserit antequam vassallus sive vassalli hæres juraverit, nisi forte jurare requisitus non juraverit.*" And then he enumerates several offences, which if the lord committed against the vassal, he was thereby deprived of his superiority or dominion over him. (V. Craig, de Jure Feudal. lib. iii. tit. 6. sect. 13.)

Lork Coke, in his learned notes on the chapter concerning

cerning Homage in Lyttelton's Tenures, calls fealty and homage a perpetual league between the lord and the tenant. "And so firm and strong (says he) was this league, that "by the ancient law of England, *Nil facere potest tenens "quod vertatur domino ad exhereditationem vel etiam atrocem "injuriam. Nec dominus tenenti e converso. Quod si fecerit, dissolvitur et extinguatur bomagium omnino, et bomagii "connectio et obligatio, et erit inde justum judicium cum "venerit contra bomagium et fidelitatis sacramentum, quod "in eo in quo delinquent puniantur, sc. in personâ domini, "quod amittat dominium, et in personâ tenentis, quod amittat tenementum."* (V. Bracton Fol. 80. Britton Fol. 174.)

From hence arose the feudal term *to defy* (*diffidare*); that is, to declare the dissolution of the faith reciprocally pledged between the lord and the vassal. And thus we find, that, in the times when the feudal law was in its vigour, not only the vassals *defied* their lords, upon certain occasions, but the same ceremony was used by the lords to their vassals, nay even by the king himself. For Mathew Paris says, that in the year 1233 King Henry the Third *defied* the Earl Mareschall. His words are these: "Et his ita gestis, rex, de consilio episcopi Wintoniensis, *Marescallum diffidavit per episcopum Menvensem*, et sic jussit contra eum arma movere, et ejus "castella obsidere." Nor can any thing better shew the opinion of that age concerning the right of resistance in the vassal against his lord, tho' that lord was the king himself, than the account which the same author gives us of a discourse between the above-mentioned earl, and one sent from the king to expostulate with him, and shew that he ought to submit himself to the king's mercy. I will therefore transcribe here some passages from it, and add a few remarks. The messenger said, that he had heard several of the court declare, it was the duty of the mareschall to make this submission, "*quia fecit injuriam domino suo, qui, antequam rex invaderet terram aut personam marescalli, ipse invasit terram domini regis, combussit, destruxit, et homines interfecit.*" Here the complaint of the earl's having committed an offence in taking up arms against the king is made to consist entirely in his being *the aggressor*. But he goes on to say, "Et si ille dicit, se hoc fecisse ad tuitionem corporis sui et hæreditatis suæ, dicunt quod non; quia in ipsius corpus et exheredationem non fuit unquam aliquid "*machinatum.*

V. Mat.
Paris. Hist.
Angl. H. III.
p. 388.

V. Mat.
Paris. Hist.
Angl. H. III.
p. 391.

“machinatum. *Nec ob hoc tamen deberet prorumpere contra dominum suum, donec oculata fide cognosceret regem contra ipsum talia cogitare, et ex tunc liceret talia attemptare.*” In these words, the only limitation put to the right of the earl to defend his person or property against the king is, that he ought not to break out into an open revolt, till he had ocular proof of the king’s designing such things against him. His answer (as given us by Matthew Paris) was first to deny the charge of his being the aggressor: “Non est verum, *quia rex ipse, cum semper paratus essem stare juri et judicio parium meorum in curia sua, et per internuntios plures pluries petii illud, quod ab ipso mihi semper extitit denegatum, terram meam violenter ingressus contra omnem justitiam invasit.*” He pleaded, that the king had denied his petition to be brought to a legal trial in the king’s court by the judgment of his peers; and had, against all justice, invaded his lands; notwithstanding which, he had made peace with him to his own prejudice; but conditionally, that if the king should not observe the articles of that peace, he should be free of homage to him, as he had been before: “*Quod ego essem extra homagium suum et diffiduciatus ab eo; sicut prius fui per dominum episcopum Menevensem.*” Wherefore, the king having broken most of the articles of the peace or agreement between them, and eagerly desiring to deprive him of his estate and liberty (as he could prove,) he had a right to recover his own, and to weaken the king’s power by all possible means: “*Unde cum fere in omnibus articulis in forma pacis deficeret, licuit mihi, juxta conventionem meam, quod meum erat recuperare et posse suum modis omnibus debilitare; maxime cum ad meam destructionem et ex hereditationem et corporis captionem anbetaret: et hoc pro certo didici, et si necesse est, probare possum.*” He goes on to say, that soon after the peace, before he had taken arms to defend himself, the king had deprived him of his hereditary office of mareschal, *without judgment of law*, and refused to restore it to him: which shewed a determination to keep no peace with him; for which reasons *he thought himself absolved from his homage by the king himself*, as he had been before their late agreement; and alledged, *that it was lawful for him to defend himself, and by all means to resist the malice of the king’s counsellors*: “Et quod magis est, post pacem per dies quindecim, antequam Walliam intrarem, aut ab aliquo me defenderem, *sine judicio*”

VOL. IV. E “spoliavit,

NOTES TO THE SECOND BOOK OF

“spoliavit me ab officio Mareschalli, quod jure hæreditario ad me pertinet et possedi; nec aliquo modo ad illud me restituere voluit requisitus. Unde aperte dici, quod nullam pacem voluit mihi observare, cum post pacem deterius quam ante me pertractarat. Unde homo suus non fui, sed ab ipsius homagio per ipsum absolutus; cum ad primam diffidationem redirem, juxta dictam conventionem, ut prædictum est. Quapropter licuit et licet me defendere, et malitiæ consiliatorum suorum modis omnibus obviare.”

Being told of the great wealth and power of the king, which would enable that prince to bring against him more foreigners than he could procure to aid him, he answered, that the king was richer and more powerful than he; but less powerful than God, in whose justice he trusted, while he maintained and vindicated his own rights and those of the nation: That he did not confide in foreigners, nor seek their confederacy; nor would he ask their assistance, if not compelled thereto by an unforeseen and immutable necessity: “*Rex ditior me est et potentior: verum est. Sed non potentior est Deo, qui est ipsa justitia, in quem confido in conservatione et persequutione juris mei et regni. Nec confido in alienigenis, nec ipsorum appeto confæderationem, nisi, quod absit, inopinata et immutabili fuero compulsus necessitate.*”

V. Mat.
Paris. Hist.
Angl. H. III.
p. 392.

And in answer to the charge brought against him by the king's counsellors, that, in hatred and to the damage of the king and kingdom, he had confederated himself with the king's enemies, particularly the French, the Scotch, and the Welch, he denied the fact as to the French, and justified his confederacy with the King of Scotland and the Prince of North Wales, because they were, not enemies but vassals to the king, till, by injuries which they had received from the king and his counsellors, they had been driven from their fealty, (as he also had been) against their will, and by compulsion. For which reason he had confederated himself with them; that, being united together, they might better prosecute and defend their rights, of which they had been unjustly deprived, than they could being separate: “*Item proponunt contra marescallum consiliarii regis, quod confæderatus est capitaneis inimicis ejus; videlicet Francigenis, Scotis, et Wallensibus, et videtur eis hoc fecisse in odium et damnum domini regis et regni. Ad hoc dicit marescallus, quod de*

Ibidem,
p. 393.

“ *de Francigenis falsum est simpliciter. Quod dictum est de Scotis et Wallensibus, et (quod) videtur hoc fecisse in odium et damnum regis, similiter falsum est, præterquam de rege Scotiæ et Leolino principe Northwalliæ, qui non inimici, sed fideles ejus fuerunt, quousque per injurias ipsis a rege et ejus consiliariis illatas a fidelitate sua inviti et coacti, sicut et ego, alienati sunt. Et propter hoc cum illis confæderatus sum, ut melius simul, quam separati, jura nostra perquiramus et defendamus; a quibus injustè privati sumus, et in magna parte spoliati.*”

From hence it appears, that the law of England in those days allowed no confederacy of the vassals of the crown with any *foreign power*, unless in the case where a foreign king, or prince, being himself a vassal of the crown, was oppressed unjustly by the king, and forced to confederate himself with his con-vassals, for their mutual defence; which kind of association was deemed to be legal, and no treason against the king or kingdom. But I would observe, that this must have rendered it very dangerous for the king to have a foreign prince his vassal, particularly one who was so near a neighbour to him as the king of Scotland.

I shall conclude my citations from this very remarkable part of M. Paris's History with some words of the Earl Marefchall, which shew that he thought it not only *lawful* but a *duty*, to resist the invasion of his rights by the king.

“ *Nec hoc esset honor regis, quod voluntati suæ con-* V. Mat.
“ *sentirem quæ non esset ratione subnixa: imo, facerem* Paris, Hist.
“ *sibi injuriam et justitiæ, quam ipse in subditos exercere* Angl. H. III.
“ *debet et conservare. Et malum exemplum dærem om-* p. 39a.
“ *nibus, videlicet, deferendi justitiæ et juris perse-*
“ *quutionem, propter voluntatem erroneam, contra omnem*
“ *justitiæ, et (in) injuriam subditorum. Nam ex hoc*
“ *appareret, nos diligere plus possessiones nostras munda-*
“ *nas, quam ipsam justitiæ.*”

P. 225. Yet it must be understood, that the honour, or barony, so created by the crown, or so delivered back again out of the hands of the king, was annexed to certain lands, which were composed of knights fees, and held of the crown by knight service.

That baronies in England, distinct from grand-serjeanties, were all territorial till long after the times of

V. Baronia, which I write, cannot be disputed. " But (to use the words of
 c.i. p. 17, 18. " Mr. Madox) " It is to be remembered,, that a city
 " or town could not be the head of a barony. When a
 " town was part of a barony, it was only part of the
 " demesnes of a barony. But if there was a castle there,
 " the castle was usually the head of the barony. For
 " example, the town of Richmond in Yorkshire was
 " part of the demesne of the honor of Richmond: but
 " the castle was the *caput honoris*."

C. v. sect.
 17.

To which I will add, that anciently Arundel Castle
 seems to have been the head of the barony annexed to the
 earldom of Sussex; for which reason the earls of Sussex
 were called earls of Arundel. Mr. Selden says, in his
 Titles of honour, " But otherwise (saving in this case
 " where grand-serjeanty was alone reserved) the baronies,
 " as I conceive, consisted of such knights-fees as we have
 " yet spoken of, but not of any certain number of them.
 " As the *chief seats* of the barons, in any part of those
 " fees, were called *capita baronum*. It was not therefore
 necessary that the *head of a barony* should be a castle;
 but, when there was a castle upon a barony, *that was*
deemed the head of it in the common usage of those
 times.

P. 225. *Besides the military service, which every baron
 was obliged to, in virtue of his fief, he was also bound
 to attend the king in his parliament and supreme court
 of justice, to assist in his judgments, and give him faith-
 ful counsel in all matters concerning the dignity of his
 crown and the good of his realm.*

B. 142.

Lord Burleigh says, in one of his Letters, *that nobility
 was nothing else but ancient wealth in a family*. By this
 he meant that nobility was in ancient times *territorial*,
 and annexed to the possession of hereditary lands. Mon-
 sieur Voltaire, in his additions to his General History,
 after observing that at Venice, and in the ancient repub-
 licks of Italy, *nobility* was attached to *dignity*, to *employ-
 ment*, and not to *lands*, says, " *that every where else
 nobility became the right of possessors of land*. The *Her-
 ren* in Germany, the *Ricos Hombres* in Spain, the
 " *Barons* in France and England, *enjoyed an hereditary
 nobility, by no other right, than that their lands, feudal
 or not feudal, remained in their families.*"

On these passages it may be necessary to make some
 observations. It is undoubtedly true that in England, as
 well

as other countries, the hereditary possession of *noble fiefs* gave nobility to families: but, I apprehend, the reason of this distinction was, an obligation annexed to those lands, namely, *that the possessors of them were to fight for their country, at their own charges, and to administer justice to the people.* For to these honourable functions the idea of nobility might justly be attached; but not to the meer possession of hereditary lands. Fiefs were divided into *noble* and *non noble*. A meer *socage tenure*, though hereditary, could not give nobility. Justice was administered to the people by all the possessors of *noble fiefs* in the king's court, in the county and hundred courts, or in the court baron. Some hereditary offices, such as shrievalties of particular counties, to which judicature was annexed, gave nobility to the families of those who held them; and so, I presume, did all offices held by the tenure of *grand serjeanty* in the king's court, or about his person. Many of these were neither military nor judicial: but they ennobled the possessors by a dignity derived from their relation to the crown and person of the king.

P. 228. *Robert earl of Mortagne, on whom he bestowed the earldom of Cornwall, had, in that and other counties, seven hundred and thirty three manors.*

Mr. Madox observes, in his *Baronia*, "that there were L.i.c. i. p.3.
 " in England certain honours, which were often called
 " by Norman, or other foreign names, that is to say,
 " sometimes by the English, and sometimes by the foreign
 " name. For example, *William de Forz, Desforce, or de*
 " *Fortibus*, was lord of the honour of Albemarle in Nor-
 " mandy. He was also lord of two honours in England;
 " to wit, the honour of Skipton in Craven. These ho-
 " nours in England were sometimes called by the Nor-
 " man name, the honour of Albemarle, or the honour
 " of the earl of Albemarle." I have quoted this passage
 to account to the reader for some such titles which occur
 in this history.

P. 229. *for by the accounts in the Exchequer we find, that much less was taken by King Henry the Second for the farms of other earldoms escheated to the crown.*

R. de Glenville, who farmed of King Henry the Second the great earldom of Richmond, was charged no more than four hundred and thirty three pounds seventeen shillings and three pence, for the manors of which the honour, or barony, was composed, and for the *third*

penny of Gippeswiz (the county court) and the service of the *Drenge*s, a species of tenants belonging to the manors. (See Madox, Baron. l. i. p. 72. Magn. Rot. 4. 2. Rot. 5. 6.)

P. 230. *But the Saxon earldoms were not hereditary: for, though they were sometimes permitted to descend from father to son, it was not by any right, or claim of inheritance, but only by the indulgence and favour of the king.*

Even so late, as in the reign of Edward the Confessor, we find, that, upon the death of Siward earl of Northumberland, because his son Waltheoff was then an infant, that earldom was given to Tofti, the son of Earl Godwin; and, on the death of Godwin, Algar, the son of Leofric earl of Chester, was invested with that earldom.

P. 231. *"The form of girding them with a sword, when they were invested with their earldoms, was likewise strongly expressive of a military commission appertaining to the office and dignity of an earl.*

Titles of
Honour,
Part II. c. v.
sect. 38.

An old Historian, cited by Mr. Selden, says, that when Sir Andrew Harcloy, earl of Carlisle in the reign of Edward the Second, was degraded for treason, *"the sword which the king him gave, to keep and defend his land therewith, when he made him earl of Cardoill, was broke over his head."* This shews how long the opinion continued, that the defence of the county was committed to the earl with the sword he received at his investiture. The earl of Chester Hugh Lupus had that county from William the Conqueror given to him and his heirs, *"Adeo liberam ad gladium, sicut ipse rex totam tenebat Angliam ad coronam suam,"* as Mr. Selden cites the words from an old author (Titles of Honour, Part II. c. v. sect. 8.

P. 234. *It is a most remarkable thing, that all the charters now extant for the creation of earls (the most ancient of which were granted by Matilda) make no mention of any determined number of knights which the earls were bound to provide.*

Of these the first in date is the charter of creation to Geoffry de Magnavilla for the earldom of Essex, which was in these words: *"Ego Matildis, filia Regis Henrici, et Anglorum domina, do et concedo Gaufrido de Magnavilla pro servitio suo, et hæredibus suis post eum hæreditabiliter,*

“ hæreditabiliter, ut sit Comes de Essexiâ, et habeat
 “ tertium denarium Vicecomitatûs de Placitis, sicut
 “ comes habere debet in commitatu suo, &c.” The rest
 relates to *other grants* which the empress made to the
 earl. Mr. Rymer, by mistake, has published in his
Fœdera another charter of Matilda, creating Milo Fitz- T. I. p. 8.
 walter earl of Hereford, as the most ancient now extant.
 It runs in these words: “ Sciatis me fecisse Milonem de
 “ Glocestriâ Comitem de Hereford, et dedisse ei motam
 “ Hereford, cum toto castello, in feodo et hæreditate sibi
 “ et hæredibus suis ad tenendum de me et hæredibus
 “ meis. Dedi etiam ei tertium denarium redditûs burgi
 “ Hereford quicquid unquam reddat, et tertium dena-
 “ rium placitorum totius comitatûs Hereford.”

The charter of Henry the Second to William de Al-
 biney earl of Arundel is so particular as to be worth in-
 serting here. The words are these: “ Henricus rex
 “ Angliæ, et dux Normanniæ, et comes Andegaviæ, See Selden's
 “ archiepiscopis, episcopis, &c. salutem. Sciatis me dedisse Titles of
 “ Willielmo Comiti *Arundel* castellum de *Arundel*, cum Honour,
 “ toto honore *Arundelli*, et cum omnibus pertinentiis suis, Part II. c. 7.
 “ tenendum sibi et hæredibus suis, de me et hæredibus sect. 10.
 “ meis, in feodo et hæreditate, et tertium denarium de
 “ placitis de *Suthsex*, unde Comes est.” This was not a
 charter of creation to an earldom, like that before re-
 cited: for William de Albiney is styled in it *earl of*
Arundel: but it gives or confirms to him the castle of
Arundel with the honour (or barony) thereunto belonging,
 and all its other appertenances, *together with the third*
penny of the county of Suffex, which is said to be *his*
earldom, though his title is taken from the castle. Note,
 that in this record the castle appears to be an appendix
 to the earldom, not the earldom to the castle.

Mr. Selden observes, that this lord was sometimes sty-
 led earl of *Suffex*, and sometimes of *Chichester*, which
 denoted the same person. Yet he was more usually called
 earl of *Arundel*, the reason of which I have given in
 another note to this book.

P. 234, 235. and as other baronies differed in the number of
 knights fees by which they were held, so likewise did
 these.

For instance, it appears by records, that, during King
 Henry the second's reign, the barony of the earl of Corn-
 wall comprised two hundred and fifteen knights fees, and

a third part of a fee; that of the earl of Norfolk one hundred and twenty five fees; and that of the earl of Warwick one hundred and two fees and a fraction.

P. 235. *We find in some charters, that the magistrates, or chief citizens, of London, York, Warwick, and other principal cities, were honoured with that title.*

Spelm.
Gloss. BA-
RONES DE
LONDON.

In King Henry the First's charter to the city of London it is said, "*Ecclesiæ et barones et cives teneant et habeant bene et in pace focnas suas cum omnibus consuetudinibus, &c.*" "In which" (says Sir H. Spelman) "I understand *barones* præstantioribus qui focnas suas et consuetudines, id est, curias habent et privilegia, eorum instar qui in comitatu *barones comitatilis* dicuntur, et *liberi tenentes*, quique de re feudali cognoscebant in civitate, ut alii illi barones in comitatu." He mentions also another charter, viz. that of H. III. de libertatibus London, which says, *Barones civitatis London eligant sibi singulis annis de se ipsis majorem*. And a writ of H. I. addressed, *Fulchero filio Walteri, et Eustachio wicacomiti suo, et omnibus baronibus de London*. After which, he says, "*Sic barones de Eboraco, de Cestria, de Warwicâ, de Feversham, et plurium villarum regis privilegiis insignium, &c.*"

Matthew Paris, speaking in general of the Londoners, says, "*Londonienses, quos, propter civitatis dignitatem, et civium antiquitatem, barones consuevimus appellare.*" Yet I hardly think the inferior citizens could ever be called barons, but only the magistrates, or those in whom the power of the city resided. In the poll tax of the first year of King Richard the Second, each of the aldermen of London was rated as a *baron*; the mayor of London as an earl; and all other mayors of great towns in England, each as a *baron*.

See the Parliamentary Hist. vol. i. p. 369.

P. 238, 239. *Madox says, he (the constable) was a high officer both in war and peace, and observes that the word signifies a captain or commander.*

The author of the Dialogue de Scaccario uses a strange expression in describing this officer at the Exchequer. He says, that next to the chancellor sat "*miles gregarius, quem contestabularium dicimus.*" It is amazing that he should call so high an officer a *common soldier*, especially as he tells us in the same place, that the constable had the precedence of the king's mareschall, "*post hunc duo camerarii, &c.*" "*post hos miles, qui vulgo dicitur marescallus;*" and (in another part of his book) that he could

could not easily be drawn from the king to attend the lesser affairs of his office at the Exchequer, because of greater and more urgent business; "*quia contestabularius a rege non facile potest avelli propter majora et magis urgentia*:" (V. Dial. de Scaccario in fine Madox Hist. of the Excheq. l. i. p. 8 and 10.) Sir William Dugdale takes notice that he is styled in some records *princeps militiæ domus regiæ*.

P. 241. In its first sense it signified master of the horse to the king.

There were also inferior mareschalls in the king's stables and employed in the care of his hawks, &c. over all whom the great mareschall presided; and therefore his office was called in a charter of King John *magistratus mariscalciæ*. See Madox's Baronia, l. i. c. 6. p. 115, 116.

P. 246. In the reign of Henry the Sixth John Baker held certain land in Kent of the king, by the service of holding the king's head in the ship, which carried him in his passage between Dover and Whitland. This was adjudged to be grand-serjeanty; &c.

Madox mentions a record of the reign of Edward the Second, by which it appears that Thomas de Warblynton held the manor of Shirefeld in Hampshire of the king in chief, by the serjeanty of being mareschall of the robes in the king's household, and of dismembring malefactors condemned, and of measuring the galons and busbels in the king's household. But he very improperly places this tenure among the grand-serjeanties, which the record does not warrant. The words are: "*Per serjeantiam effendi marescallus de meretricibus in hospitio regis, et dismembrare malefactores adjudicatos, et mensurare galones et bussellos in hospitio regis*." Certainly Sir H. Spelman would not have called this the highest and most illustrious feudal service, as he describes grand-serjeanty. It was a petty serjeanty of the meanest and most dishonourable nature. The record traces it up as high as to the reign of King Henry the Second.

P. 253. and other examples occur of the same power being exercised, for several ages, by private persons in England, without the authority of a royal commission.

I do not mean that it was so exercised for several ages after the times of which I write, but in those times, and before. Mr. Selden says, "the persons that gave this dignity anciently were sometimes subjects (and these
Titles of Honour, part ii. c. v. sect. 33.

"gave

“ gave it without any superior authority granted to them) “ as well as sovereigns. Though *long since* it hath grown “ to be clear, none gives it with us but the sovereign, or “ some other by his command or commission.” It appears that the liberty of receiving it from a subject, uncommissioned by the king, was sooner taken from the king’s immediate tenants in chief, than from others. Mr. Selden mentions a writ of the twenty ninth of Henry the Third, in which those of the second kind (that is, such as held military fees of subjects) were to be distrained, *quod tunc sint ibi parati ad recipiendum arma de quibus-
cunque voluerint*. In which form the writs went to all the subjects of England. He likewise cites writs of summons or *disfringas* from the close rolls of the forty fourth of Henry the Third, of the sixth of Edward the First, and of the sixth of Edward the Second, in which a distinction is made, that some were to come and receive knighthood from the king; and others, *being not tenants to the king*, should be summoned or distrained *ad se milites faciendos*, or, *ad arma suscipienda*.

Ibid. Nay, our kings themselves have been knighted by the hands of their subjects, as Henry the Sixth by the Duke of Bedford’s, and Edward the Sixth by the duke of Somerset’s.

In France, the great restorer and patron of chivalry, Francis the First, chose to receive the order of knighthood from his subject, Monsieur Bayard, illustrious only by his valour and conduct without reproach. Mr. Selden quotes a passage from M. Paris, in which it is said, that, in the year 1252, Alexander the Third, king of Scotland, having been knighted by Henry the Third, king of England, the Earl Mareſhall demanded the king of Scotland’s horse and accoutrements, as a fee due to him by ancient custom: but that prince answered, that he conceived no such fee could be due to the Earl Mareſhall from him, *because, at his own pleasure, he might have received his knighthood, either from any other catholic prince, or from any of his own nobles*. Mr. Selden by nobles understands gentlemen, and I, believe, very rightly.

P. 254. The poet Gunther, who was contemporary with Henry the Second, says in a Latin poem, that the Emperor Frederic Barbarossa, the better to repel the enemy from his borders, and defend his country by the superior force of his arms, granted knighthood to many persons

persons of low and vulgar birth, which in France would have been thought a stain to that dignity.

By some old laws of France, if any man, who was not a gentleman by his father (though he was so by his mother) had been made a knight, his lord might 'degrade him by cutting off his spurs on a dunghill. Du Cange asserts, that it was necessary for a person, who aspired to the order of knighthood, to prove, that not only his father and mother, but his grandfather and grandmother, were nobly born : which Father Daniel confirms, but observes that in France and other countries, this rule in time was relaxed, and that the French kings dispensed with it on many occasions.

See Selden's Titles of Honour, part ii. c. iii. sect. 24.

v. Du Cange Differtat. x. sur l'Histoire de St. Louis. v. Hist. de la Milice Francoise, t. i. l. iii. c. 4.

Ibid. And in the nineteenth year of the same king (Henry the Third) all the sheriffs of England were commanded to make proclamation in their respective counties, that all who held of the king in chief one knight's-fee or more, and were not yet knighted, should take arms and get themselves knighted before the next Christmas, as they loved the tenements, or fees, which they held of the king."

It seems that this injunction was afterwards thought too hard on the poorer knights. For it was declared by act of parliament in the first year of King Edward the Second, " that none should be forced to take upon them " the order and arms of a knight who had not twenty " pounds yearly in fee, or for term of life ; or before " they came to the age of one and twenty years. And " such as had holden their lands but a small time, or al- " ledged great age or default of their members, or any other " incurable disease, or charge of their children, or suits, or " any other such necessary excuses, were only to pay a rea- " sonable fine." But it must be observed, that this act does not confine the obligation of receiving knighthood to tenants in chief of the crown. Breton, who wrote about the time of Edward the First, says, that a lord could not legally compel his tenant to give him the aid due by tenure for making his son a knight, if he was not a knight himself.

See Breton c. des prises des avoirs. Selden's Titles of Honour, part ii. c. v. sect. 36.

P. 254, 255. *Whether, in the times that I write of, any compulsion was used to oblige men to be knighted I cannot positively affirm: but, as Mr. Madox, in his History of the Exchequer, has given no records of any fines having been levied on that account, or proclamations issued to injoin it, till the reign of Henry the Third, and*

and many in and after that reign, the presumption is strong, that it had not been the practice before the death of King John.

See his Britannia,
States and
Degrees of
England.

Camden dates this compulsion from the reign of Henry the Third, and observes, that from that time *it seemed a title of burthen rather than of honour*. Indeed we may reckon a practice, so contrary to the spirit and policy of knighthood, among the bad methods made use of, by the rapacious ministers of that king, to draw money from the subject.

P. 256. *Every knight had his lady, to whom he vowed faithful service, whose favours he wore in tournaments and in battles, and for whose honour he was always prepared to combat, with no less zeal and enthusiasm, than for the defence of the catholick religion itself.*

Even in the reign of Queen Elizabeth, a challenge was sent by the earl of Essex, to the count de Brancas Villars, who was governor of Rouen, then besieged by king Henry the Fourth and his English confederates under the command of that earl, in which he offered to maintain, among other points, *that he had a more beautiful mistress than Villars*. It must however be observed, that, in doing this, he shewed himself, not only a good knight, but a good courtier: for he knew the queen would think, that *she was the mistress* of whose beauty he proposed to be the champion. This, and some other similar passages of that reign, shew us the reason why Spenser, who was a man of good sense, as well as a fine poet, thought he could not make his court more agreeably to his sovereign, who loved the notions of romantic gallantry and honour, than by representing her, in his *Fairy Queen*, as the patroness of the most sublime chivalry, and as sending forth the moral virtues, illustrated under the characters of different knights, to free the world from vice and oppression, and to merit her favour by heroick actions. In this light the *Fairy Queen* is as much a state poem, as the *Aeneis* of Virgil.

P. 260. *The ransoms paid to knights for the prisoners they took, and the share assigned to them, by custom, of all the booty and spoils that were gained from an enemy, furnished them with ample means of advancing their fortunes: but they had moreover rich presents made to them by the princes or nobles they served, upon the performance of any eminent feats of valour.*

After

After the battle of Poitiers the English said, *that they would not set so high a price upon a knight or gentleman but that he might still be able to live according to his rank and to follow the wars in an equipage agreeable to his quality.* This is mentioned by Froissard as an act of generous courtesy. Mr. Selden says, that, by the law of arms, those captives whose ransom came to above 10,000 crowns belonged to the king. Barnes tells us, after Froissard, that by their victory at Poitiers all the prince's men were *enriched*, as well by ransoming, as by the spoil they found there, consisting of gold, silver, plate, and jewels, besides horses, armour and what they found about the dead. At the end of the action the prince embraced the Lord Audley, and said to him, *Sir James, both I myself and all others acknowledge you, in the business of this day, to have been the best doer in arms. Wherefore, with intent to furnish you the better to pursue the wars, I retain you for ever to be my knight, with five hundred marks yearly revenues, which I shall assign you out of my inheritance in England.* Five hundred marks *per annum* in those days was a very noble estate. But the generous knight, though much pleased with the honour of the gift, divided it all among his four esquires, who had served him well in the battle. When the prince knew this, he confirmed the grant to them, and settled on him a further pension of *six hundred marks*, which was confirmed to him by the king for the term of his life, and for a twelvemonth after, to be received out of the coynage of the stannaries in Cornwall, and the prince's lands in that country. Many more instances might be given, to shew the profits that knights might gain by their chivalry, when these institutions were in force. The trade of war seems at present to be more gainful to the general, but much less to the officers, or private soldiers of an army, than it was in those days.

P. 261. *Indeed it never quite sunk, till the spirit of chivalry began to grow out of fashion, and was even rendered the object of ridicule.*

The fear of this consequence made the duke d'Alva say, *that Don Quixote would ruin Spain*; though, in truth, the ridicule of that ingenious book is not pointed against the spirit of chivalry, but against the absurd representation of it in the Spanish romances.

P. 263. *I will add, that the two last, who appear to have fashioned themselves upon the same model, and to have possessed in perfection all the virtues of their order, were, in France, the Chevalier Bayard, and, in England, Sir Philip Sidney.*

See Sir F.
Greville,
Lord
Brook's Life
of Sir P.
Sidney, c.
ii. p. 31.

In valour, courtesy, generosity, and a high and noble sense of honour, the peculiar virtues of chivalry, these two knights may be well compared together; but Sir Philip Sidney's character, upon the whole, is much superior to Bayard's, because he not only excelled in wit and learning, but was also endowed with great talents and abilities for state affairs, as we know from the testimony of the greatest statesman of that age, William prince of Orange, who sent this message to Queen Elizabeth by Sir Fulk Greville, "*that (in his judgment) her majesty had one of the ripest and greatest counsellors of state in Sir Philip Sidney that then lived in Europe, to the trial of which he was pleased to leave his own credit engaged, untill her Majesty might please to employ this gentleman either amongst her friends or enemies.*"

P. 34.

The credit of the prince of Orange wants no support; but I will add, from the same author Sir Fulk Greville, the testimony of the earl of Leicester, who said to Sir Fulk, "that when he undertook the government of the Low-countries he carried his nephew (Sir Philip Sidney) over, with him, as one amongst the rest; not only despising his youth for a counsellor, but withal bearing a hand over him as a forward young man. Notwithstanding, in short time he saw this sun so risen above his horizon, that both he and all his stars were glad to fetch light from him. And in the end acknowledged, that he held up the honour of his casual authority by him whilst he lived, and found reason to withdraw himself from that burthen after his death." But lest this praise might be suspected, as coming from a relation, Sir Fulk says further: "In what extraordinary estimation his worth was, even amongst enemies, will appear by his death; when Mendoza, a secretary of many treasons against us, acknowledged openly, that howsoever he was glad King Philip, his master, had lost in a private gentleman a dangerous enemy to his state; yet he could not but lament to see Christendom deprived of so rare a light in these cloudy times, and
"bewail

C. iii. p. 3.

“ *bewail poor Widow England (so be termed her) that,
 “ having been many years in breeding one eminent spirit,
 “ was in a moment bereaved of him by the hands of a vil-
 “ lain*” (or *low common soldier*; for that is the meaning
 of the word *villain* in this place).

We may therefore conclude, that, in the faculties of his mind, Sir Philip Sidney rose above the highest pitch of knightly accomplishments, and was not only *un Chevalier sans peur et sans reproche*, but fit for the greatest offices of state and government. It seems indeed no less dishonourable to the memory of Queen Elizabeth, that she should have let such a spirit and such talents as his remain so long unemployed, than that she should have trusted so much of her most arduous business to her unworthy favourite the earl of Leicester! As for the Chevalier Bayard, he does not appear to have any extraordinary parts, or to have been ranked among the *statesmen* of the times in which he lived: nor had he any superior degree of knowledge, to distinguish him much from the ignorant nobility of his country: whereas Sir Philip had acquired such a reputation for science and taste in the fine arts, that (to use the words of the above-mentioned author) “ *the universities abroad and at home accounted him a
 “ general Mæcenas of learning; dedicated their books to
 “ him, and communicated every invention or improvement
 “ of knowledge with him. There was not a cunning painter,
 “ a skilful engineer, an excellent musician, or any other artifi-
 “ cer of extraordinary fame, that made not himself known to
 “ this famous spirit and found him his true friend without
 “ hire, and the common rendezvous of worth in his time.*”

Since I wrote this, the publick has been entertained with the life of a very extraordinary man, the Lord Herbert of Cherbury, written by himself, from which he appears to have been as strongly possessed with the high spirit of chivalry as Sir Philip Sidney, and was also a man of parts and learning. But he seems to have had weaknesses and defects in his character, arising chiefly from vanity, which are not to be found in Sidney, none of whose actions were improper, and much less were they ridiculous. Yet it must be owned, if these gentlemen are compared as *writers*, that Lord Herbert's History of King Henry the Eighth is superior upon the whole to any work of Sir Philip Sidney.

P. 264. *Whether, in the times of which I write, we had any knights bannerets is not very clear. The name does not occur in our histories or records before the reign of Edward the First.*

History of
the Exche-
quer, p 614.
note 1.

Mr. Madox has cited a roll of the twenty fifth year of that king, in which they are mentioned, together with *knights bacblers*, which latter denomination was relative to the former, signifying knights of an inferior rank to the bannerets. But *milities vexilliferi* are mentioned by Matthew Paris before that time, and one can hardly doubt that these words are a Latin translation of knights bannerets. Father Daniel says, in his Treatise on the Militia of France, that he can find no mention of them in any historian before the reign of Philip Augustus. But he observes, that the writers of that time do not speak of them as a novelty; and therefore he supposes, that this institution commenced when the regulations for tournaments and other matters of chivalry were made in France. We probably received it from thence: but under what reign is uncertain. Mr. Camden erred much in supposing it so late as Edward the Third's. (See his account of Degrees of States in England, prefixed to his Britannia.)

Ibid. In reality this was not a new order of knight-hood, but only a higher rank, conferred by the sovereign, or by the general of a royal army, on some of that order, who were richer than others, and were followed into the field by a greater number of vassals.

Titles of
Honour,
part ii. c. v.

See Ma-
dox's Baro-
nia p. 160.

V. Britan-
nia, p. 171-
old edition.

It appears by a record, which Selden has cited on this subject, that in Edward the Second's reign the pay of a banneret was four shillings a day, the pay of each of the knights, who served under his banner, two shillings, and of each esquire one shilling. In the great roll of the sixteenth of Edward the Third, the same sums are allowed by the king to a banneret, for his own pay, and for that of three knights and thirty-six men at arms. Camden cites a charter of the same king, by which he advanced Sir John Coupland to the state of a banneret, because, in a battle fought at Durham, he had taken prisoner the king of Scotland, and it runs in these words: "Being willing to reward the said John, who took David de Bruce prisoner, and frankly delivered him unto us, for the deserts of his honest and valiant service, in such sort as others may take example by this precedent to do

"us

“ us faithful service in time to come ; we have promoted
 “ the said John to the state and degree of a banneret : and
 “ for the maintenance of the same state we have granted
 “ for us and our heirs to the same John five hundred
 “ pounds by the year, to be received for him and his
 heirs, &c.”

Here we see that the means of maintaining the dignity was a grant from the crown made after the promotion : but generally the knight so promoted was qualified with a sufficient estate before his advancement. Mr. Selden quotes an ancient book, to shew, that, in France, it was required that a banneret should have a sufficient estate to maintain fifty gentlemen to accompany his banner. (Titles of Honour, part ii. c. iii. sect. 23.) But another, which he also cites, informs us, that, in Burgundy, it was enough if he was attended with twenty five. From the grant having been made to Coupland and his heirs, and from the mention of *inheritance* in the speech of Sir John Chandos to the *Black Prince*, which I have recited in this book, one should think that the dignity of banneret was hereditary : but Mr. Selden affirms it never was so in England. The difficulty may perhaps be solved in this manner. The honour of knighthood was personal, and never descended to the heir of a knight without a new creation : but when the heir of a banneret was made a knight, he was intitled to the state and degree of a banneret by right of inheritance. Thus it appears by a writ, that, under Richard the Second, Thomas Camoys was a banneret, *as many of his ancestors had been before him* ; and for that reason he was discharged from being knight of the shire for the county of Surrey. “ Rex
 “ Vicecomiti Surriæ salutem : Quia, ut accepimus, tu
 “ Thomam Camoys Chivaler, qui bannerettus est, *sicut*
 “ *quamplures antecessorum suorum extiterint*, ad essendum
 “ unum militum venientium ad proximum parlamentum
 “ nostrum pro communitate comitatus prædicti, de as-
 “ sensu ejusdem comitatus, elegisti ; nos advertentes quod
 “ hujusmodi banneretti, ante hæc tempora, ratione alicujus
 “ parlamenti eligi minime consueverunt, ipsum de officio
 “ militis, ad dictum parlamentum pro communitate co-
 “ mitatus prædicti venturi, exonerari volumus.” But there is much obscurity in this matter. For Mr. Selden shews that this Thomas Camoys was a baron and a peer of that parliament, and that many of his ancestors had

likewise been peers. (Titles of Honour, part ii. c. v. sect 25.) It is therefore equally strange that he should have been elected knight of the shire, or discharged from that service as a *banneret*, and not as a baron. Mr. Selden indeed observes, that the name of *banneret* is given to some temporal barons as if in them it were equivalent and synonymous to *baron*. In the first of Richard the Second divers earls and barons are mentioned by name in the parliament roll, "*et plusieurs autres seigneurs barons et bannerets etans au dit parlement assemblez.*" But this was after the introduction of barons by writ. The same learned writer shews, that in France the form of making bannerets was by cutting off the point or end of the *pennon* or streamer, and so altering the shape of it into a square banner. But it does not appear that this ceremony was used in making Sr. John Chandos a banneret, as is related in this book, p. 264, 265. Father Daniel says that in France the eldest sons of bannerets, before they were knighted, were of inferior rank to knights bachelors, and served under their pay, being called *Esquires Bannerets*: but when they had received the order of knighthood with the usual ceremonies, they had a right of advancing their banners after the death of their fathers, and so the dignity of banneret may be said to have been patrimonial and feudal.

Titles of
Honour, c. v.

Ibidem, c.
iii. sect. 23.

V. Hist. de la
Milice
Francoise, l.
iii. c. v. t. i.

P. 265. *This alternative was, I presume, the real motive, that induced them to be guilty of such a glaring absurdity, as to inflict these penances upon soldiers, for killing or striking their enemies in the persecution of a war, which they themselves admitted to be lawful; &c.*

In one of the subsequent canons three years penance is enjoined by the mercy of the bishops, to the Normans who fought at Hastings, instead of one year for every man they knew they had slain in that battle, and forty days for every man they knew they had struck. "*Sed qui in publico bello pugnauerunt, pro misericordia tres annos poenitentiz eis episcopi statuerunt.*" *Publico bello* here signifies the war against Harold, and particularly the battle of Hastings, which in one of the former canons is called *magno praelio*; and mentioned in another by these words, *excepto hoc praelio ante regis consecrationem*. The sixth Canon, of which notice is taken a little lower in the page here referred to runs in the following words: "*Qui autem tantum premio adducti pugnauerunt, cognos-*" can

V. Spelman's
Councils, v.
ii. Can. i.
Ibidem, c. ix.

“cant se tanquam pro homicidio pœnitere debere.” I have followed the learned Mr. Johnson in translating *bomicidium* murder, because it is generally so used by the writers of that age.

P. 269, 270. Yet in Domesday-book they are distinguished from other free tenants, called there *liberi homines*, by not having the power, which these enjoyed, of giving away, or selling, their estates, without leave of their lords. It seems that these *liberi homines* were a remainder of the alodial tenants of the Saxon folkland, that is, land of the vulgar, opposed to bocland or thaneland. A certain number of them was necessary to constitute a manor; and therefore, when that number was incomplete, some who held in villenage were enfranchised, to make it up; as appears by the testimony of the record above mentioned. We also find there, that some who were in possession of this alodial freedom thought it more eligible to seek a defence and protection, by recommending themselves to the patronage of some feudal lord, or even of two lords, if the situation of their lands made it necessary for them to have two protectors. The services which were performed by them to the lord of the manor, in their alodial state, were predial and rustick. A certain number of free socmen, as well as of these, appears to have been necessary to every lord of a manor, for holding the pleas of the manor court, &c.

I will give some proofs of all these several assertions. In the lesser Domesday-book frequent mention is made of the *liberi homines* in these terms: “*Iste liber homo fuit; suus homo fuit; potuit vertere se quo voluit; potuit terram suam vendere vel dare, potuit recedere sine licentia domini.*” All these expressions denote an alodial tenure; the feudal tenants being more closely bound to their lords, and not having such liberty.

In the manor of Simpling in Norfolk it is said, “*Quatuor liberi homines liberati fuere ad hoc manerium persciendum.*” Before these men were *liberati*, enfranchised, they must have been in villenage, slaves, or bondmen.

In the lesser Domesday-book mention is made of *liberi homines commendati*, *dimidii commendati*, and even *dimidii subcommen-*

subcommendati. The nature of this *commendatio* is thus explained: "*Liber homo hanc terram tenebat, et quo vellet abire valebat: summisit se in manu Walteri de Dowai, pro defensione sui.*"

See Domesday-book, f. 18.
Tit. Glouc. Bercheley et Derhust, Spelman's Gloss. RA-DECHENISTEE.

It appears by the Survey, that in Gloucestershire there were *liberi homines* in the time of Edward the Confessor called *Radechenisters*, and that they ploughed, harrowed, and sowed the demesne lands for their lords.

That a certain number of *free socmen*, as well as of these were necessary to a manor, may be proved from this passage in the survey, "*Tres istorum socmanorum accommodavit Riotus Roger Comiti, propter placita sua tenenda.*" I need not observe, that none but freemen could *bold pleas*.

P. 271. *In Domesday-book, that great record of the ancient state of this kingdom, a distinction is made between villeins who are affixed to a manor, and others of still a lower and more servile condition, distinguished by the names bordarii, cotarii, and servi; &c.*

See Appendix to the first volume, p. 529, 530. N. III. De relevio villani. See also the Saxon laws, other law-books, Glanville, l. 5. Coke's Institut. vol. i. l. ii. c. 11.

In a note to one of the laws of William the Conqueror, transcribed in the Appendix to the first volume of this History, I have observed, that sometimes the word *villanus* signifies not a *slave* but a *farmer, inhabiting a village*, which is the first sense of the word, and in which it must be taken, where persons called by that name seem to be equalled with *burgesses*. But, in Glanville and other law-books, *villanus* or *villein* was a man *regardant to a manor*, so as to go along with it whenever it changed its master, and in such absolute servitude, that his person, children, and goods belonged to his master. Indeed Judge Lyttelton says, "that if a man is seized of a manor, to which a villein is regardant, and granteth the same villein by his deed to another, then he is a villein in gross and not regardant." But this alteration of the name made none in his state, with respect either to the liberty of his person and family or the property of his goods.

P. 272. *Yet in other places he gives the appellation of bondmen to all below the degree of ceorls or free socmen.*

See his treatise on Feuds and Tenures, c. 7.

This learned author. (Sir H. Spelman) describes the *ceorles* "as husbandmen, who lived upon the *outlands* of the Saxon *thanes*, and were customary tenants at the

“ the will of their lords, rendering unto them a certain portion of victuals, and things necessary for hospitality. This rent or retribution, they called *feorme*, from whence we derive the name of farm and farmers. *But this service was no bondage.* For the *ceorl*, or husbandman, might as well leave his land at his will, as the lord might put him from it at his will; and therefore it was provided, by the laws of Ina, in what manner he should leave the land, when he departed from it to another place. And the writ of waste in Fittherbert seemeth to shew, that they might depart, if they were not well used.”

These *ceorls* have been often confounded with slaves and bondmen, under an inaccurate use of the word *villani*, and so have other free inhabitants of *villages* in those days. The *free socmen* were of an order superior to these; and many of them, in the times of which I write, possessed *hereditary* estates of a strict feudal nature, which therefore they could not leave *at pleasure*, without the consent of their lords; but which they could not be put out of, without a legal forfeiture. The account given of the *ceorls*, in the passages above-cited, seems to agree with what is said in Domesday-book of the *liberi homines*, or *alodial* tenants, at the time when that record was compiled. But some of these may have been of a higher rank and degree, according to the extent of the lands or farms they possessed. Bracton takes notice of L. iv. p. 209. a species of tenure in the demesne lands of the king called *villain socage*. Those who held by this tenure were *glebæ ascriptitii*, affixed to the land, and performed *villain services*, but *certain and determined*. Their privilege was, that, while they would and could perform these services, they could not be turned out. Nor could they be compelled against their will to hold such tenements: for which reason they were called *free*. Yet they could not dispose of their tenements, nor transfer them to others by way of gift, no more than *mere villains*; but, if they removed, they delivered up their tenements to their lord, or his bailiff, who gave them to others to be held in villenage. Bracton distinguishes these *villain socmen*, from those who held of the king in *free socage*; and from some whom he calls *adventitii*, who held by *covenant* in the same manner as *villain socmen*, but had not the same privilege.

NOTES TO THE SECOND BOOK OF

P. 272, 273. *Nay, we are told by Glanville, that, in his time, if a freeman married a woman born in villenage, and who actually lived in that state, he lost thereby the benefit of the law (that is, all the legal rights of a freeman) and was considered as a villein by birth, during the life-time of his wife, on account of her villenage.*

L. i. p. 5. *Bracton says, that a child begotten by a freeman, whether in marriage or not, upon a woman born in villenage, and living in that condition, was born a slave: but, if the woman was out of the power of her lord, though born in servitude, and was married to a freeman, the issue of that free bed would be free. This explains what is said more indistinctly by Glanville.*

I dwell on these circumstances as they make a very curious part of the history of those times, and (God be thanked) are little known at present to my countrymen.

P. 273. *But he says, that no villein could acquire his freedom with his own money: for, notwithstanding his purchase, he might, according to the law and customs of the kingdom, be brought back into villenage: because all the goods of a villein born belonged to his lord; &c.*

L. ii. c. 11.
69. 172.

*Sir Thomas Lyttleton says, "that no land holden in villenage or villein land, nor any custom arising out of the land, shall ever make a freeman villein; but a villein may make free land to be villein land to his lord. And where a villein purchaseth land in fee simple, or in fee tail, the lord of the villein may enter into the land, and oust the villein and his heirs for ever. And after, the lord, if he will, may let the same land to the villein to hold in villenage." I would observe, that neither here, nor in any other part of this author's book relating to villenage, is any distinction made by him between *villeins*, and *servi nativi*, or *bondmen*; but he uses the former word as comprehending all those, whose persons, children, and goods, were the property of their lords, whether they held lands or no; which shews that in his time the legal sense of the term *villein* was the same as in Glanville's, and that the servitude of those who were in that state continued unaltered, though he speaks of it as a *tenure* when lands were held by the villein; and mentions also *villein service*, "as to carry or recarry the dung of his lord out of the city, or out of his lord's manor unto the*
" land

“land of his lord, and to spread the same upon the land,
 “and such like.” Bracton also speaks of slaves who *l. iv. p. 190.*
held in villenage of their lord, and uses the Latin words ^{192.}
villanus and *servus* as synonymous terms. He likewise *Ibidem.*
 puts a case, of a lord giving his slave land to be held
 by *free service*, without having enfranchised him; and
 says, “that such a gift or grant does not alter the servile
 “state of the tenant, because a tenure in villenage does
 “not take away any liberty from a free person, nor does
 “a freehold confer liberty upon a villein. But if, with-
 “out *manumission*, a lord gives a freehold to be held by
 “the slave *and his heirs*, it might be presumed that he
 “meant to enfranchise him; because a slave could have
 “no heirs without being enfranchised.”

P. 276, 277. *But yet, as in Lyttelton's Tenures, which
 were written during the reign of King Edward the
 Fourth, there is a whole chapter concerning the state of
 persons in servitude, it is evident that many such were
 still remaining in those days.*

Many slaves were enfranchised in consequence of the
 rebellion headed by Wat Tyler and Jack Straw, in the
 fourth year of the reign of King Richard the Second.
 But the next year the king complained to his parliament, *See Parlia-*
 that he had been forced to grant charters of liberty and *mentary*
manumission, under the great seal of England, to the re- *Hist. p. 386,*
 bels, who were only bond-tenants and villeins of the *387. vol. i.*
 realm: which knowing to be done against law, he desired
 them to seek remedy, and provide for the confirmation
 or revocation thereof. Whereupon the lords and commons
 unanimously resolved, *that all grants of liberties*
and manumission, to the said villeins and bond-tenants,
obtained by force, were in disherison of them, the lords
and commons, and destruction of the realm; and there-
fore to be nulled and made void by authority of parlia-
ment. Nevertheless it is probable, that the apprehensions
 of such another insurrection had no small effect to in-
 cline the lords of manors, both to treat their slaves bet-
 ter, and to lessen the number of them, from this time
 forwards. But the progress of this disposition was gra-
 dual and slow, as all such changes must be.

P. 294. *If we look to the best accounts of the original
 customs of the ancient German nations, we shall find,
 that, in their communities, all the freeholders enjoyed*

an equal right with the nobles, to assist in deliberations on affairs of great moment.

V. Cluver
German.
Antiq. l.i. p.
94. c. 11.
Sheringham
p. 77.

Tacitus says, that in Germany (under which name, in his time, were comprehended all those countries from whence the Saxons and Angli originally came) "*de minoribus rebus principes consultant, de majoribus omnes; ita tamen, ut ea quoque, quorum apud plebem arbitrium est, apud principes tractentur.*" By the word *plebem* here used, we must understand *the inferior orders of freemen*: for the same author says, that even the *liberti* were of no account in their commonwealth. "*Liberti non multum supra servos sunt, raro aliquod momentum in domo, nunquam in civitate*" &c. And the sense of the word here is further explained by a passage in Cæsar's Commentaries concerning the Germans. He says, "*Neque quisquam agri modum certum, aut fines proprios habet; sed magistratus ac principes, in annos singulos, gentibus, cognationibusque hominum qui unâ coierunt, quantum eis et quo loco visum est, attribuunt agri, at anno post alio transire cogant, cujus rei multas afferunt causas*" &c. one of which is, "*ut animi æquitate plebem contineat, quum suas quisque opes cum potentissimis æquari videat.*" In this place it is evident, that *plebem* signifies those who had a share in the annual distribution of lands, and consequently were freemen, but of the inferior orders. And that *all those*, by the German customs, concurred with the nobles in consulting upon and determining affairs of *great moment*, appears undeniably from the passage of Tacitus above-cited.

Ibid. *We are assured, by a record which Dr. Brady has cited, that, so late as in the fifteenth year of King John, not only the greater barons, but all the inferior tenants in chief of the crown, had a right to be summoned to parliament by particular writs.*

V. Rot. Pat.
15 Johan.
p. 2. m. 2.

The words are these; "*Rex Baronibus, militibus et omnibus fidelibus totius Angliæ salutem, &c. Unicuique vestrum, si fieri potest, literas nostras super hac transmissimus; sed ut negotium illud, quod et nobis et vobis ad commodum cedat et honorem, cum majori expediretur festinatione, has literas,*" &c.

See Selden's
Titles of Honour,
last edition, part
2. 38.

Mr. Selden has given us, in his Titles of Honour, another writ of summons sent the same year, viz. the fifteenth of King John. The words of it are: "*Rex Vicecomiti Oxon. salut. Præcipimus tibi quod omnes milites*

“ *milites ballivæ tuæ, qui summoniti fuerunt esse apud Oxoniam ad nos a die omnium sanctorum in xv dies, venire facias cum armis suis, corpora vero baronum sine armis singulariter, et iv discretos milites de comitatu tuo illuc venire facias ad nos ad eundem terminum, ad loquendum nobiscum de negotiis regni nostri.* Teste meipso apud Wilton xi die Novembris.”

Eodem modo scribitur omnes vicecomitibus.

Mr. Selden calls this a *strange writ of Summons*, and says, that, for ought he has seen, *it is without example*. So strange indeed it is, that I am unable to understand what it means. If the *quatuor discreti milites*, whom the sheriff was to send out of every county, were representatives of each county, or knights of the shire, what were the other *milites qui summoniti fuerunt esse apud Oxoniam*, &c. If these latter knights were, as Mr. Selden seems to suppose, the inferior tenants in chief, who, by the clause in King John's Magna Charta, are distinguished from the greater barons, and are to have only a general summons to parliament, what were the four whom the sheriff was required to send out of every county, *ad loquendum nobiscum de negotiis regni nostri*? There is no notice taken, that they were to be chosen *de legalioribus et discretioribus militibus singulorum comitatum*, as in the summons of the forty ninth of Henry the Third, nor who were to choose them; but it rather seems to have been left to the sheriff himself. Neither does it appear, why the other *milites qui summoniti fuerunt* were ordered to come with their arms, and the barons unarmed, nor who these barons were. If they were the king's barons, the *barones majores*, they ought to have been summoned by letters from the king, and not by the sheriff. The whole is so obscure, that I can draw no inference from it, except that there was at that time an irregularity and arbitrary variation in the summons to parliament, which might be owing to the confused and unsettled state of the kingdom.

Two years afterwards, a method of summons for tenants in chief of the king, with a distinction between his greater barons, and other vassals of a degree inferior to those, was settled by one of the clauses in King John's Magna Charta, which I shall transcribe from the manuscripts of the greatest authority, viz. those which Dr. Blackstone has followed in his edition. “ Et ad habendum commune consilium regni de auxilio assidendo,
“ aliter

NOTES TO THE SECOND BOOK OF

“ aliter quam in tribus casibus prædictis, vel de scutagiō
 “ assidendo, *summoneri faciemus archiepiscopos, episcopos,*
 “ *abbates, commites, et majores barones sigillatim per*
 “ *litteras nostras: et præterea faciemus summoneri in ge-*
 “ *nerali per vicecomites et ballivos nostros omnes illos*
 “ *qui de nobis tenent in capite ad certum diem, scilicet*
 “ *ad terminum quadraginta dierum ad minus, et ad cer-*
 “ *tum locum; et in omnibus literis illius summonitionis*
 “ *causam summonitionis exprimemus: et sic factā sum-*
 “ *monitione negotium ad diem assignatum procedat se-*
 “ *cundum consilium illorum qui præsentēs fuerint, etsi*
 “ *non omnes summoniti venerint.”*

The words *faciemus summoneri in generali, per vice-*
comites et ballivos nostros, omnes illos qui de nobis tenent
in capite, do not express an election or representation, but
 only direct that the summons to these should be general
by the sheriffs or bailiffs of the king in each county; whereas the others were to be summoned by *particular*
writs. In the first writ cited here, of the fifteenth of
 King John, the summons was general, as well to the
 greater barons, as to the king's inferior tenants in chief;
 but it is declared in the writ itself, that this was done
 against the proper form, and only for more expedition:
 “ *Ut negotium illud, quod et nobis et vobis ad commo-*
 “ *dum cedat et honorem, cum majori expediretur festi-*
 “ *natione.”* This clause of King John's charter re-esta-
 blishes and confirms the ancient method with relation to
 the greater barons, but admits of the general summons
 with relation to all others who held *in capite* of the
 crown. There is in it no intimation, that they were
 to be represented by knights of the shire, as Spelman
 and others suppose; nay, the last words thereof seem
 rather inconsistent with any kind of representation,
 “ *et sic factā summonitione, negotium ad diem assigna-*
 “ *tum procedat secundum consilium illorum qui præsentēs*
 “ *fuerint, etsi non omnes summoniti venerint.”* This
 was proper to be declared in the case of a general sum-
 mons to a large number of persons, because there the
 non-attendance of many among them might well be ap-
 prehended: but had they been required to appear by re-
 presentatives from every county, such a declaration would
 not have been necessary, nor could it have been pru-
 dently made.

The

The term of forty days which is assigned in the clause for their coming to parliament after their summons, and the promise there given, that the cause of their summons should be expressed in the writs, I suppose were agreeable to the usage of the kingdom in cases of the same nature, that is, in the summons to all the greater barons, to the knights of the shires, and to the representatives of cities and boroughs. But it must be observed, that, in all the ancient copies of the several charters of King Henry the Third, this clause is left out. I have seen an accurate transcript of that which he granted in the first year of his reign, taken from the archives of the church of Durham; and there I find the reason why this and some other clauses of King John's Magna Charta were omitted therein. The words are these: "*Quia*
" vero quædam capitula in priore cartâ continebantur,
" quæ gravia et dubitabilia videbantur, scilicet de scuta-
" giis et auxiliis assidendis, de debitis Judæorum, et
" aliorum, et de libertate exeundi de regno nostro vel
" redeundi in regnum, et de forestis et forestariis, war-
" rennis et warennariis, et de consuetudinibus comita-
" tum, et de ripariis et eorum custodiis, placuit supra-
" dictis prælatibus et magnatibus ea esse in respectu quous-
" que plenius consilium habuerimus, et tunc faciemus
" plenissime tam de hiis quam de aliis quæ occurrerint
" emendanda, quæ ad communem omnium utilitatem
" pertinuerint et pacem et statum nostrum et regni nostri."
 (For the ease of the reader I give this clause without the abbreviations in the old writing). The difficulty therefore concerning the assessment of scutage and aids, about which there was a doubt, and which the king's ministers might think an encroachment upon his prerogative, occasioned this clause to be left out, together with some others. In the subsequent charters of King Henry the Third, provision is made, *that scutage shall be taken as it was in the time of King Henry the Second*: "*Scutagium de cætero capiat, sicut capi sole-*
" bat tempore regis Henrici avi nostri." And there is a general saving to all persons of the liberties and free customs they had before enjoyed. "*Et salvæ sint archie-*
" piscopis, episcopis, abbatibus, prioribus, comitibus, ba-
" ronibus, templariis, hospitalariis, et omnibus aliis, tam
" ecclesiasticis quam sæcularibus personis, libertates et
" libere consuetudines quas prius habuerunt." This was a medium between an express declaration (such as had
 been

been inserted into King John's Magna Charta) of the right of the subject to have no aids nor scutage taken without consent of parliament, and a denial of that right on the part of the crown. But the clause in King John's charter concerning the method of summons to parliament was entirely dropt in all the subsequent charters, both of King Henry the Third and King Edward the First. Sir H. Spelman assigns it as a reason for this omission, that this whole branch of King John's Magna Charta was not comprized in the articles between him and his barons, whereupon that charter was grounded, but gained from him afterwards. Yet, as I see no cause why King Henry the Third, or his son, should have been unwilling to agree to this method of summons, which was much more easy and convenient to them than the former, I rather ascribe it to a dissatisfaction in some of the inferior tenants in chief, who might think it an injurious diminution of their privileges, not to be summoned as the greater barons were, and as these had usually been, by particular writs. This might probably induce the crown to recur to the old method of summons; till the expedient of representing them by knights of the shires, in the same manner as other freeholders in the several counties had before been represented, and thus exempting them from the obligation of attending in person, was agreed to and settled, about the middle, or towards the latter end of the reign of King Henry the Third, according to the best lights I can obtain in this matter. Yet all the inferior tenants in chief of the king were not comprehended in that representation: for we find by the close rolls, that, in the thirty fourth year of Edward the First, the tenants in *antient demesne* came to parliament, and acted therein distinctly from the knights of the shire. It likewise appears by a record, that, in the fifth year of King Edward the Second, they were exempted from contributing to the wages of such knights (V. Cotton's Abridgement of the Records in the Tower, page 1.)

V. Rot.
Claus. 34.
Edw. I. m.
15. dorf. in
cedula.
& Brady of
Boroughs,
p. 37. &
Tyrrel's
Appendix to
Hist. of Eng-
land, p. 174.
175, 176.

I cannot quit this subject without observing, that, although in the abovementioned clause of King John's charter mention is made of the *greater barons*, who were to be summoned to parliament by particular writs, yet the other tenants of the king, who were to be summoned generally, are not there called *lesser barons*; nor do I find that title ever given to the inferior tenants in chief
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of the king, in any charter or record. But there are some very antient, which give the name of *barons* to the principal tenants under the king's barons. For instance, the barons of Robert Fitzhaimon earl of Glocester are mentioned in a charter of King Henry the First to the abbey of Abington. "Sicut designatum fuit per barones *ipsius Roberti*." And Henry de Novoburgo earl of Warwick gave certain lands in that county to the same abbey in the presence of his barons (says the grant); one of which barons, viz. Thurstan de Montfort, is recorded to have held ten knights-fees under the grandson of that earl.

In one of the laws of the Norman kings of Sicily are these words: "Post mortem *baronis vel militis*, qui à comite vel barone alio baroniam aliquam vel feudum tenuerit."

Bracton likewise thus describes the vavassors, or great subvassals: "Sunt et alii, qui dicuntur vavassores, viri *magnæ dignitatis*:" and he ranks them next to the king's barons. These had therefore a better right to the title of *lesser barons* than those who held of the king in capite by socage, or by fee-farm, or by a single knight's-fee, or half a knight's-fee; as many did among those who by the above-cited clause in the charter of King John were to have only a general summons to parliament. Nor was there any impropriety in such persons representing the community of the county, in which they were some of the principal gentlemen, having curiam de suis hominibus, courts of their own, as lords of manors, which to this day are called *court barons*.

It is said in an ancient manuscript, cited by Cambden, that King Henry the Third, "post magnas perturbaciones et enormes vexationes, inter ipsum regem, Simonem de Monteforti, et alios barones motas et sopitas, statuit et ordinavit, quod omnes illi comites et barones regni Angliæ, quibus ipse rex dignatus est brevium summotionis dirigere, venirent ad parliamentum suum, et non alii, nisi forte dominus rex alia similia brevium eis dirigere voluisset."

Upon this I would observe, that here is no mention of *lesser barons* who might be called to parliament by the king's writs; but the sense of the passage is, that, at the end of the troubles between Henry the Third and his barons, (viz. after the battle of Evesham) he acquired a power, by act of parliament, to call to his parliaments

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V. Monasticon, tom. i. p. 106.
Hody's Hist. of Convocat. p. 289.
V. Dugdale, Warwickshire, f. 303.
Hody, ut supra.

L. i. c. 8.

V. Camden's Britannia. Selden's Titles of Honour, sect. 21. p. 740.

such earls and barons of the realm, as he should vouchsafe to send writs to, exclusively of all others, who were not to come, unless he afterwards should send to them the like writs. Which power was exercised by some of his successors in the persons of the most ancient and greatest barons of the realm. For instance, William de Vesci, the brother and heir of John de Vesci, who had been summoned in the forty ninth of Henry the Third, *inter majores barones*, was not summoned till the twenty third of Edward the First, though he was forty years old at John's decease; and, from that year till the sixth of Edward the Second, was never summoned again. Many other instances of the like nature occur in looking over the lists of summons to parliament. And some who had been summoned were totally omitted, and came no more to parliament. This was certainly a very great and extraordinary change of the ancient constitution, which supposed that the right of advising the king in his great council was inherent in his barons, and not to be taken from them without forfeiture of their baronies. Nothing indeed could have induced them to consent to such a law, but the great disorder into which the whole state had been thrown by a long civil war, in the end of which Henry the Third and his son Prince Edward were victorious, and able to do what they pleased. It is very surprising, that in times, when the strength of the peerage was less awed by that of the crown, the established feudal notions should not have prevailed to the abolition of this law. I must however observe, that with relation to *earls* the power never was exercised; it not appearing that any of these were at any time omitted. And as for those, who, without having any baronies in them, were called to parliament by writs from the crown, the learned author of the *Inquiry into the manner of creating Peers*, has said much to prove, that such writs gave them no *peerage*. He observes, "that, from the forty ninth of Henry the third to the twenty third of Edward the Fourth (from which times the summons have been more regular) not fewer than ninety eight laymen have been summoned to parliament at one single time, by the very same writs by which the earls and other undoubted barons were summoned, and yet neither themselves, nor any of their name or posterity, were ever afterwards summoned to any parliament or great council." From whence, and from the silence of the house
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of lords and of the heirs of these several persons, with regard to this omission, and from there being no words in their writs that express any creation of a peerage or barony, he takes it for granted, that they could only be summoned as *assistants* to the house of lords, and as *de consilio regis in parlamento*. This hypothesis would undoubtedly solve many difficulties in this dark part of the History of our ancient Constitution, if it could be fully made out. But, in the case of the greater barons, the separating from their peerages the right of voting in parliament, and subjecting it to the arbitrary will of the king, whether it was done by an act of parliament (as the words *statuit et ordinavit*, in the words cited by Camden, seem to imply) or by a mere extension of prerogative, was an innovation very hurtful to the dignity of the peers and to the balance of the government. Some have doubted the authority of the manuscript cited by Camden; and I should give no credit to it, if it were not confirmed by the indisputable practice of all our kings from Edward the First to Richard the Third. It must however be noted, that such omissions in many cases, though not in all, may be well accounted for, from the frequent and necessary absence of many of the peers on the king's service abroad; while the crown had great dominions and almost perpetual wars on the continent. On such occasions the omitting to summon them to parliament was no encroachment on their rights, but a proper exemption from a duty they could not perform. It may also have been done not improperly, according to the notions of those times, when the lands that constituted a barony were seized by the crown for any fault or defect of service, during the life of the baron, or for any number of years: whereas an arbitrary omission of summoning those to parliament, who were willing and able to do their duty there, if it did not extinguish the peerage, deprived it of one of its most valuable privileges; and, if it did extinguish it, rendered the highest property of the kingdom quite precarious and dependent on the will of the crown. But this belongs not to my subject; no such thing having been thought of in the times of Henry the Second, or ever before. What I meant to consider here was only the notion, that *the lesser barons*, or the *barones secundæ dignitatis*, were not *the great subvassals* who held manors under earls or other eminent nobles, but *the inferior tenants in capite of the crown*;

crown ; a notion espoused by some writers of no small authority, and on which more than one hypothesis has been founded, with no warrant from antiquity, so far as I can discover.

P. 297. *A writ of summons directed to the sheriffs of Bedfordshire and Buckinghamshire, and requiring two knights to be sent for each of those counties, is extant in the close roll of the thirty eighth year of Henry the Third.*

The words of the writ are these : “ Tibi districtæ præcipimus, quod præter omnes prædictos venire facias coram concilio nostro apud Westm. in quindenâ Paschæ prox. fut. 4 legales et discretos milites de comitatibus prædictis, quos idem comitatus ad hoc elegerint, vice omnium et singulorum eorundem ; viz. 2 de uno comitatu, et 2 de alio, ad providendum una cum militibus aliorum comitatum, quos ad eundem diem vocari fecimus, quale auxilium nobis in tantâ necessitate impendere voluerint. Et tu militibus et aliis de comitatu prædicto necessitatem nostram, et tam urgens negotium nostrum diligenter exponas, et ad competens auxilium nobis ad præsens impendendum efficaciter inducas. Ita quod præfati 4 milites præfato concilio nostro ad prædictum terminum Paschæ respondere possint super prædicto auxilio pro singulis comitatibus prædictorum” &c. Dr. Brady supposes that this was not a summons to a general council ; but Dr. Hody calls it a parliament, and I think with good reason. For M. Paris says, *congregati sunt iterum Angliæ magnates Londini*. The word *iterum* refers to the preceding council, held the same year, sexto Calend. Februarii, which the same author calls *parliamentum*. But in reality this point is not worth disputing. For if, at this time, the knights of the shires were summoned to the lesser councils, they certainly were to the greater. It is observed by Dr. Brady, that the date of the writ was soon after the breaking up of a general council. And so it well might, because that general council had denied the king aid, and therefore it was necessary to summon another as soon as possible. He also objects, that there are two other parts of this writ, the last of which is a command to the sheriff to levy all debts that were due to the king, &c. *A clause not to be found in parliament-writs*. But this, at most, proves only what I shall not dispute, that the form of these writs was not then so precisely determined, as not to admit of occasional

See Brady's Introduction to his History, vol. i. from p. 212 to 215. See Hody, p. 341. V. M. Paris, sub ann. 1254. p. 595, & additamentum. p. 123. P. 592. ibidem. See also Hody, p. 338.

occasional variations. Nor does the coupling of other things with a summons to parliament make it no summons.

Ibid. And there is a clause in the great charter of the ninth of the same king, whereby it is declared, that, together with the spiritual and temporal lords, other inferior freeholders, et omnes de regno, by which words I understand the whole commonalty of the realm, granted to the king the fifteenth part of all their moveable goods, in return for the liberties accorded to them in that charter.

The words in the original are these: "Pro hac autem concessione et donatione libertatum istarum et aliarum libertatum contentarum in cartâ nostrâ de libertatibus Forestæ, archiepiscopi, episcopi, abbates, priores, comites, barones, milites, libere, tenentes, ET OMNES DE REGNI NOSTRO dederunt nobis quintamdecimam partem omnium mobilium suorum." The words *milites, libere tenentes, et omnes de regni nostro dederunt nobis* &c. coming after *barones, &c.* seem to declare very plainly, that the whole commonalty of the kingdom had concurred with the nobility in granting this tax to the king, as a return for the charter. Dr. Brady, to elude the force of the proof against his hypothesis, is obliged to contend, that *dederunt* in this place signifies *paid*, and not *granted*. But D. Hody observes rightly, that this conjecture appears to be false, from this consideration, *that the charters were drawn up in the parliament itself, wherein the subsidy was granted, and sealed long before the money could be paid.* He adds, "it cannot be supposed that *omnes de regno* were present in that parliament, so as to grant the subsidy in their own persons; but they did it either *per se* or *by their representatives.*" How these words were understood by Henry de Knighton, who wrote his History little more than a century afterwards, will appear from this passage, in his account of the reign of Henry the Third: "Post hæc Rex Henricus concessit magnatibus terræ duas chartas, unam de Forestâ, et aliam de libertatibus, propter quam causam *communes regni* concesserunt quintamdecimam partem omnium bonorum suorum mobilium et immobilium." The two last words are a mistake, being not agreeable to the charter: but the words *communes regni* are a clear explanation of the

See Hody's
Hist. of Con-
voc. p. 303.

omnes de regno in the charter. As for the expression *rex concessit magnatibus terræ duas chartas*, it must not be understood as excluding the commons out of that grant; for the contrary appears by the charter itself: but *magnatibus* is here a general term that comprehends the whole parliament; as it certainly does in many other passages of our ancient historians. And we have in the Cotton

See Tyrrel's
App. p. 21.
vol. v.

library a manuscript chronicle of Walter de Coventry, who lived and wrote under the reign of Henry the Third, which, in giving an account of this parliament, says, "*Ibidem concessa est w. regi a comitibus, et baronibus, et clero et populo, quinta decima omnium bonorum.*"

But what will better determine the true sense of this clause, is the following passage in a record of the thirty seventh of that king: "Noverint universi, quod D. H.

See Petit,
Rights of
the Comm.
App. p. 164.
Hody, Hist.
of Convoc.
p. 336, 336.

rex Angliæ Hereford illustris, R. Comes Norff. et Marchallus Angliæ, H. Comes Hereford et Essex. J. Comes de Warwico, P. de Sabaudia, caterique, *magnates Angliæ* consenserunt in sententiâ excommunicationis generaliter latam apud West. tertio decimo die Maii ann. regni regis prædicti 37, in formâ scil. quod vinculo præfatæ sententiæ ligentur omnes venientes contra libertates contentas in cartis communium libertatum Angliæ, et de Forestâ &c. Sciendum autem quod si in scriptis super eadem sententia a quibuscunque confectis, seu conficiendis, aliud vel aliter oppositum vel adjectum fuerit, aut articuli aliqui alii in eis contenti inveniantur, D. rex, et prædicti *magnates omnes, et communitas populi*, protestantur publice in præsentia venerabilium patrum B. Dei gratia Cant. arch. totius Angliæ primatis, nec non et episcoporum omnium in eodem colloquio existentium, quod in ea numquam consenserunt nec consentiunt, sed de plano eis contradicunt." This colloquium is called, by Mat-

V. Rot. pat.
37 H. III.
m. 22. dorso.

thew of Westminster, *magnum parliamentum*. And surely the *communitas populi* being thus named in addition to, and distinct from, the *magnates omnes*, is a very strong evidence, added to the others before mentioned, that the commons were present, and acted together with the nobles in this parliament, two years before the time assigned by Brady for their first coming to those assemblies. That difference indeed would be small, if it did not affect the whole foundation upon which his hypothesis stands, viz. *that this Innovation was the consequence*

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of Simon de Montfort's victory at the battle of Lewis, and the captivity of the king.

Ibid. Nor can I discover, in the history of those times, any reason sufficient to render it probable, that so great an alteration should then have been made in the constitution of England.

It by no means appears, that, under the government of King Henry the Third, either the feudal powers of the nobility over the commons were more relaxed than they had been during the reigns of Henry the Second or Henry the First; or that the condition of citizens and burgeses had been mended by any encrease of trade and commerce, or that the freeholders in the counties had been raised any higher, by an augmentation of wealth, or extension of privileges, which could open the way to such a change. Nor was trade or commerce esteemed *more honourable* in the age of Henry the Third than in that of his grandfather, or during the government of the Saxons. On the contrary, the disposition and temper of the times, as well as the genius of the government, were more unfavourable to trade in the Norman times than the Saxon; and the state of England, during the period from the death of Henry the Second till that of Henry the Third, was more turbulent, more distempered, and more unfriendly to the encrease of the national industry, or any enlargement of our commerce, than under the moderate and prudent administrations of the two former Henries,

P. 299. *We know indeed that some boroughs, which, from their poverty, were unable to bear the expence of sending members to parliament, declined the use of that privilege.*

There are some instances of boroughs that petitioned to be restored to the use of that privilege after a very long interruption. Thus, in the reign of James the First, See Brown Agmondesham, Wendover, and Great Marlow alledged, Wil. vol. 1. by petition to the house of commons, that the interruption in their sending burgeses, for four hundred years past, was not owing to their own neglect, but to the fault of the sheriffs; or, if it was owing in any measure to the burghs themselves, it was because their predecessors were

poor and unable to maintain their members; whereas now they were content to undergo that charge.

On this I would observe, that, as they had not complained before, in so long a period of time, it is probable, that it was not *the neglect of the sheriffs*, but *their poverty and inability to bear the charge of sending members to parliament*, which had occasioned so long an interruption of their right. Their petition was allowed by the commons and the king, as it appeared that they were parliament burghs by prescription, not by charter.

Ibid. Among the close rolls of the twenty fourth year of that king, there is a writ of summons to parliament, in which it is asserted, not as an innovation introduced by the earl of Leicester, but a maxim grounded on a most equitable law, established by the foresight and wisdom of sacred princes, that what concerned all should be done with the approbation of all; and that dangers to the whole community should be obviated by remedies provided by the whole community.

Rot. Clauf.
24 Edw. I.
m. dorfo.

The words are these: "*Sicut lex justissima, provida circumspectione sacrorum principum stabilita, hortatur, ut quod omnes tangis ab omnibus approbetur, sic et innuit evidenter, ut communibus periculis per remedia provisata communiter obvietur.*" If the earl of Leicester had been the first who applied this maxim to the constitution of English Parliaments or great councils, it would have been impossible for Edward the First to have grounded it on a law *provida circumspectione sacrorum principum stabilita*. Nor could he have used that expression, if he himself, or his father, had introduced the practice of summoning the commons to those assemblies.

P. 300. Some very eminent writers have supposed, that none but the king's inferior tenants in chief were at first represented by the knights of the shires: but there is no sufficient evidence to support that opinion.

See Spelman of Parliament p. 64.

Sir H. Spelman and other writers have dated the original of knights of the shires from one of the clauses in King John's Magna Charta, which directs that the inferior tenants in chief of the crown should be summoned to parliament in general. But that those words do not import any representation, I have endeavoured to shew in a former note to this book: nor does it appear by other evidence,

evidence, either of records or of history, that, in consequence of that clause, *such tenants in chief* were at any time *the sole electors of knights of the shires*, or *that only such tenants in chief could be elected*. Sir H. Spelman indeed adds "that other freeholders, because they could not always be distinguished from them that held *in capite* (which encreased daily) grew by little and little to have voices in the election of the knights of the shires, and to be at last confirmed therein by the statute 7 Hen. IV. and 8 Hen. VI." But how does he shew that there ever was a time, when knights of the shires were elected by the *tenants in capite*, without the voices of other freeholders? He supposes the point which should be proved. For, that under the reigns of King John and of Henry the Third, when he thinks that such elections began to be made, other freeholders came to the county-court is most certain.

If we consider the statute of the seventh of Henry the Fourth, which is the oldest in our books that regulates or directs the form of county elections, we shall find it was made (as the preamble declares) *at the grievous complaint of the commons in parliament of the undue election of the knights of counties for the parliament, which be sometimes made of affection of sheriffs, and otherwise, against the form of the writs directed to the sheriff, to the great slander of the counties, and hindrance of the business of the commonalty in the said counties, &c.* All the regulations laid down in it appear designed to prevent abuses arising from the partiality of the sheriffs, or other undue influence used in elections, not to make or to confirm any change in the qualifications or rights of the electors. The enacting part of it says, "Our sovereign Lord the King, willing therein to provide remedy, by the assent of the lords spiritual and temporal, and the commons in this present parliament assembled, hath ordained and established, that from henceforth the elections of such knights shall be made in the form as followeth: (that is to say) at the next county to be holden after the delivery of the writ of the parliament, proclamation shall be made in the full county of the day and place of the parliament, and that all they that be there present, as well suitors duly summoned for the same cause, as others, shall attend to the election of the knights for the parliament, and then in the full county they shall proceed to the election

See Keble's
Statutes, 7
Hen. IV.
c. 15.

“ *freely and indifferently, notwithstanding any request or commandment to the contrary,*” &c. What follows concerns only the return of the writ, and neither in the part above-recited, nor in any subsequent clause, is there a word that denotes any intention in the legislature to encrease the number of the knights of the shires, in prejudice to the right of the king’s tenants in chief, or that gives the least intimation of any such right having been ever in those tenants, exclusive of others, who were suitors to the county-court and present therein. All the freeholders were so from the earliest times: and that the substance of this law was no more than an *affirmance of an old right and custom*, appears from the preamble of a subsequent act made in the eleventh of the same king, which says, that “ *whereas in the parliament holden at Westminster, the seventh year of the reign of our said Lord the king, there was ordained and established by a statute for the preservation of the liberties and franchises of the election of the knights of the shire used through the realm, a certain form and manner of the election of such knights, as in the said statute more fully is contained,*” &c. There can be nothing more different than *the preservation of liberties and franchises used through the realm in elections*, from the communicating of a liberty and franchises to persons not entitled to it before. The act of the eighth of Henry the Sixth, instead of enlarging, restrains the number of electors. It enacts, that those knights shall be chosen in every county *by the people dwelling and resident in the same counties, whereof every one of them shall have land or tenement, to the value of forty shillings by the year at the least, above all charges*: which is explained in a subsequent act, of the tenth of the same king, to mean *freeholds of that value within the county for which the election is to be made*. And the reason why this was done is set forth in the preamble: *Whereas the elections of knights of shires to come to the parliaments of our Lord the King, in many counties of the realm of England have now of late been made by very great outrageous and excessive number of people, dwelling within the same counties of the realm of England, of the which most part was of people of small substance and of no value, whereof every of them pretended a voice equivalent as to such elections to be made, with the most worthy knights and esquires dwelling within the same counties, whereby man-slaughter, riots, batteries, and divisions among the gentlemen,*

gentlemen, and other people of the same counties, shall very likely rise and be, unless convenient and due remedy be provided in this behalf: our Lord the King, considering the premises, hath provided, ordained, and established by authority of this present parliament, &c.

It is amazing that any person, who had ever read this statute, or that of the seventh of Henry the Fourth, should say, as St. Amand does in his Historical Essay on the Legislative Power of England, p. 187. that *none but the immediate tenants of the crown (the lesser barons) came to the county-court, and none other had votes till, by the 8 H. VI. c. 7. all freeholders of 40 s. per annum had that right given them.* The very reverse of all this appears by the statute he refers to: it gives no right to freeholders of 40 s. per. ann. which they had not before; but *excludes* all those who had freeholds under that value. The words, *whereas the elections of knights of shires in many counties of England have now OF LATE been made by very great, outrageous, and excessive numbers of people, and whereof every of them PRETENDED a voice equivalent with the most worthy knights and esquires dwelling within the same counties,* shew beyond contradiction, that the intention of the legislature in enacting this statute was not to alter the constitution and usage of the kingdom, with respect to elections for the shires, but to remedy a recent abuse and innovation, grounded (as they thought) on unjustifiable pretensions. It seems pretty evident, that the practice of parcelling out land in small portions, and thereby multiplying freeholds inferior in value to what they had usually been in former times, produced this complaint of *very great, outrageous, and excessive numbers of people, who were of small substance and of no value, coming to these elections.* But it is certain, that this law and that of the tenth of the same king were *restrictive*, instead of giving a right of voting to any freeholders who did not before enjoy that franchise.

That *none but the immediate tenants of the crown (the lesser barons) came to the county-court before the eighth of Henry the Sixth* (as the same author asserts), is a most false and unwarranted proposition. I have given, in the Appendix to the first volume of this History, a charter of Henry the First, relating to the manner of holding county courts, in which it is said by that king, “*Et volo et præcipio, ut omnes de comitatu eant ad comitatus et hundreda, sicut fecerint tempore regis Edwardi.*” And in ano-

the clause he says, “ *Et si modo exurgat placitum de divisione terrarum, si est inter barones meos dominicos, tractetur placitum in curia mea: Et si est inter vavassores duorum dominorum, tractetur in comitatu.*” The vavassors therefore were suitors to the county-court, and all the freeholders of the county, *omnes de comitatu*, were required to go thither, as they had done in the time of Edward the Confessor. Nor does it appear that any alteration was made in this point by any subsequent law. In the above-recited statute of the seventh of Henry the Fourth, *all that are present in the county-court, as well suitors duly summoned for the same cause, as others, are commanded to attend to the election of the knights for the parliament.* And that, before the making of this law, the vavassors, or *mesne tenants*, who did not hold their lands directly of the king, might not only concur in the elections of knights of the shires, but be themselves *elected*, seems evident from the words of Chaucer, in the description of his *Franklin*,

“ At sessions was he lord and sire,

“ Full oftimes was he knight of the shire;

“ A sheriff had he been and a coronour,

“ Was never such a worthy vavassour.”

See Cotton's Abridgment of the records in the Tower, p. 13. Edw. III. p. 18, 19. V. Rot. Claus. 24 Hen. III. m. 8. dorso. & 26 Hen. III. m. 6.

Yet it must be observed, that, to qualify any person for being elected, the mere possession of a knight's-fee was not sufficient; but it was necessary that he should be *miles gladio cinctus*, that is, knighted according to the forms then in use. By an act of the first of Richard the Second, all who had lands to the value of twenty pounds yearly in fee, or for term of life, were obliged to receive the order of knighthood. And this law seems to have been founded on a more ancient custom. For there are writs of Henry the third, commanding the sheriffs to summon to the county courts all who held one knight's-fee, or less than a whole knights fee, *dum tamen de tenemento suo, tam militari quam socagio, possint sustentari*, that they might be there made knights. There is also an act of 23 Hen. VI. c. 15. which says, “ *the knights of the shires shall be notable knights of the same counties, for the which they shall be chosen, or otherwise such notable esquires, or gentlemen born of the same counties, as shall be able to be knights: and no man to be such knight, which standeth in the degree of a yeoman, or under.*”

In this law the ability of being made knight, that is, the having freeholds sufficient to qualify them for it, is admitted instead of the actual order of knighthood required by the

the old writs: and *yeomen*, with *all under that degree*, are *excluded*, agreeably, I presume, to ancient usage: but in no statute relating to the knights of the shires is there the least intimation of its being required that they should be *tenants in capite of the king*, or of the usage having been altered with regard to that point.

The next circumstance I shall consider belonging to this matter is the wages paid to the knights. It must be granted, that, if by virtue of the above mentioned clause in King John's Magna Charta, or by any subsequent statute or custom introduced in the time of Henry the Third or Edward the First, such knights were elected *by tenants in capite of the king, exclusively of all others*, and represented *them alone*, no others could be charged with the payment of their wages. But in one of the parliament rolls of the fifty first year of Edward the Third, n. 45. the commons petition the king, that the said expences be levied *of all the commons of the counties, as well within franchises as without; except the franchises of cities and boroughs, and except those who came to parliament by writs of summons, and their tenants who hold in bondage*. The words in the record, which I have examined, run thus: *Que plaise au roy nostre seigneur que soit ordeine a ceste present parlement, que les dites despenses soient leveez de toutz les communes des dites contees, si bien deinz franchises come dehors; forspris de la franchise des citees et burghs, et forspris de ceux qui vieignent icy par brief à parlement, par summonce, et de leurs tenants qui tieignent en bondage*. Of the preamble to this petition, which is very remarkable, I shall have occasion to take notice in a subsequent note. It will be enough to add here, that the answer of the king is *soit fait come devant a esté usé en ce cas*. Which was the proper answer, because no exception was made in this petition to tenants *in ancient demesne*, or *in gavelkind*, who appear by other records to have been entitled to an exemption from these expences; and therefore the king would neither wholly reject, nor wholly grant the demand. But it was impossible that the commons could have made it so general, if the right of election for counties had in those days been confined to *tenants in chief of the king*. And it is not pretended by Spelman, or any other writer, that it was extended or enlarged in the reign of any king between Henry the Third and Edward the Third inclusively. It seems to me therefore, that this roll contains a strong

See the records in the Tower.

NOTES TO THE SECOND BOOK OF

strong evidence against the notion that the electors of knights of the shires were anciently none but the *tenants in capite*, called by some modern authors *lesser barons*.

One of the most striking arguments, used by Dr. Brady to support that notion, is the manner of electing the commissioners for the shires in the kingdom of Scotland, where, by an act made in the year 1427, (the twenty third of James the First) the *small barons* and *free tenants, who held of the crown in capite*, were discharged from coming to parliaments, and allowed to chuse commissioners to serve in their stead. This law was confirmed in the year 1587, by an act of James the Sixth, wherein it is declared, that none shall have votes but such as have forty shillings land in free tenendrie *bolden of the king*. The permitting of the inferior tenants in chief to come to parliament by representatives, instead of a personal attendance, I believe to have been done (as many other things were in Scotland) after the example of England; but the excluding of all *not bolden of the king* from such elections seems to have arisen from a policy, which had before rendered the government and constitution of Scotland very different from our's in many respects. For (whatever conformity there was between them in the times of which I write) it is certain, that, from the reign of Alexander the Third to that of James the First, the aristocratical power in the state of that kingdom had continually increased, and prevailed over the popular, far more than in England. No just or conclusive inference can therefore be drawn from this circumstance in those laws, to prove by analogy, that no freeholders, but tenants in chief of the crown, had anciently a right to elect the representatives of English counties.

Ibid. There is not in any of those writs, nor in the oldest we have for sending up representatives from cities or boroughs, the least intimation, that such elections were a novelty then introduced.

The words of the writ directed to the sheriff of Bedfordshire and Buckinghamshire, in the thirty eighth of Henry the Third, which is the oldest now remaining, have been recited in a former note to this book. The next for knights of the shires, which is of the forty ninth of the same king, runs thus: "Item mandatum est
" singulis

“ singulis vicecomitibus per Angliam, quod venire faciant duos milites de legalioribus et discretioribus militibus singulorum comitatuum ad regem London in Octabis prædictis in forma supradicta.” The writ, which contains the form here referred to, is lost. To the cities and boroughs we have one in these words: “ Item in forma prædicta scribitur civibus Ebor. civibus Lincoln. et cæteris burgis Angliæ; quod mittant in forma prædicta de discretioribus et legalioribus et probioribus tam civibus quam burgensibus suis.”

The form here referred to may probably have been that of a writ of summons sent to the city of London, and now lost. For that was the most proper to be enrolled as a pattern for all the other writs to the cities and boroughs, *mutatis mutandis*. And it must be observed, that, in this abridgment or minute, York and Lincoln are particularly named, but London is not; which seems an evident proof, that the writ directed to that city was kept on the rolls, and therefore it was not thought necessary to enter the others, which were in the same form. The words *et cæteris burgis Angliæ* imply, that the boroughs which sent members to Parliament were well known: but, if none had ever sent any before this time, so general a description of them could not have been given. It appears, that the Cinque Ports were summoned distinct from the others; and the writ to Sandwich only was entered on the rolls with a *similiter mandatum est singulis portibus pro se*. Probably, that to London was in much the same form. The cause of their summons is there declared to be *tam pro negatio liberationis Edwardi primogeniti nostri quam pro aliis communitatem regni nostri tangentibus*. It is directed thus: *Rex baronibus et ballivis portus sui de Sandwich salutem*. And the precept is, *Vobis mandamus, in fide et dilectione quibus nobis tenemini, firmiter injungentes (ut) omnibus aliis prætermiſſis mittatis ad nos ibidem quatuor de legalioribus et discretioribus portus vestri. Ita quod sint ibid. in Octab. prædictis nobiscum, et cum præfatis magnatibus regni nostri tractatum et super præmissis consilium impensuri. Et hoc, sicut honorem nostrum et vestrum et communem utilitatem regni nostri diligitis, nullatenus omitatis*. But further we find, that in the writs for the expences of knights of the shires, in the twenty eighth year of Edward the First, which are the first of that

reign

V. Rot.
Clauſ. 28
Edw. I. m.
12. dorſo.

Tyrrel's Ap-
pendix to his
History, p.
60, 61.
& Biblio-
thec. Polit.
Dial. viii.
V. Rot.
Clauf. 49.
Hen. III. m.
10. dorfo.
See also Bra-
dy's Answer
to Petyt, p.
140.

reign remaining on the rolls, it is said, that "the count-
ty should pay them, *prout alias in casu consimili fieri*
" *consuevit*, words which imply a custom." It must
indeed be observed, that the writ of the forty ninth of
Henry the Third has not these words. Mr. Tyrrel
supposes, that they were left out by the negligence of
the clerks: but a better reason may be assigned from the
writ itself. For there it is said, that the expences of
the knights had been very great, because their attendance
had been longer than they expected; but that the coun-
ties having before contributed largely to other public ex-
pences for the defence of the kingdom, they should not
be charged to this too highly. "Cum nuper vocari
" *fecimus duos de discretioribus militibus singulorum*
" *com. &c. ac iidem milites moram diuturniorem quam*
" *credebant traxerent ibidem, propter quod non modicas*
" *fecerint expensas; cumque communitates comitatum*
" *dictor. varias hoc anno fecerunt præstationes ad defen-*
" *sionem regni nostri, &c. per quod aliquantulum se ni-*
" *mum sentiunt gravari, tibi præcipimus quod duobus*
" *militibus, qui pro communitate dicti comitatus præfato*
" *parlamento interfuerunt, de consilio quatuor legalium*
" *militum ejusdem comitatus, rationabiles expensas suas*
" *in veniendo ad dictum parlamentum, ibidem morando,*
" *et inde ad partes suas redeundo provideri facias, et eas*
" *de eadem communitate levare facias, proviso quod ipsa*
" *communitas occasione præstationis istius supra modum*
" *non gravetur."* It is very probable therefore, that, as
the expences of the knights of the shire had been greater
than usual, and the king was unwilling to load the coun-
ties, which had been so much burthened before, with
too heavy a charge, the words *prout alias in casu consi-*
mili fieri consuevit were on purpose left out, as no pro-
per rule to proceed by in this case.

See Brady's
Answer to
Petyt, p. 141
from the
Clauf. Rot.
42 H. III.
m. 1. dorfo.

Dr. Brady has given us a writ of expences allowed to
four knights of each county in the kingdom, for attend-
ing upon a parliament in the forty second year of Henry
the Third, not as members thereof, but on an extraor-
dinary commission of inquest into all excesses, transgres-
sions, and injuries done and committed by justices, she-
riffs, bailiffs, or any other persons within the said coun-
ties. No sum is fixed; but they are to have *rationabiles*
expensas suas in eundo, redeundo, et in præfato parla-
mento pro dictis negotiis morando. This is a very extraor-
dinary

inary writ, and, as far as I can discover, the single one of the kind that ever was granted. Yet from hence Dr. Brady supposes, that the words *prout alias in casu consimili fieri consuevit* got into ancient writs for the expences of knights, citizens, and burgesses: a strange supposition! it being far more likely, that the form of this writ, sent on a particular occasion, was taken from those, than that this was the precedent upon which they were grounded.

As for the two clauses in King John's charter concerning the manner of levying aids and scutage, I cannot think they conclude any thing with regard to this matter; See the first of them saying only, that no scutage or aid should for the future be imposed, but by the common council of the kingdom; and the other declaring in what manner the greater and lesser tenants in chief of the king should be summoned on such occasions. How does it appear, that the latter was intended, as some have supposed, to enumerate *all the members of parliament, all entitled to sit there?* If there was no dispute at that time about the method of summoning the representatives of counties, cities, and boroughs, there was no need of mentioning any of them in that clause, which is not the description of a parliament or common council of the kingdom, but a declaration in what manner, and by what kind of summons, certain members thereof, viz. those who held of the king, should be called to the parliament, for the imposing of scutage or other aids.

In the roll of the 51 Edw. III. n. 45. part of which I have cited in a former note to this book, I find these words: "*Pourceque, de commune droit du royaume, de chascun comté de'Engleterre sont et seront eleus deux personnes d'estre à parlement por le commune de dits comtés.*" Now, if, as this record testifies, two persons were to be elected to parliament for the commonalty of every county *by the common law of the realm, de commune droit du royaume*, we must look for the beginning of this law or usage, in much more ancient times than the reign of King Henry the Third, even in the earliest institutions of the Anglo-Saxon government. This expression seems to me of very decisive importance, as to the question before us.

Ibid.

See the
Clauses in
Blackstone's
edition of
the charters.
Magn. Carta
Regis Johan.
p. 13. Clause
12. p. 14.
Clause 14.

See the re-
cords in the
Tower of
London.

Ibid. But some writs are taken notice of by Mr. Tyrrel, a diligent searcher into records on this subject, which set forth a claim of certain tenants in ancient demesne, before the fifteenth year of Edward the Second, that they ought not to be charged with wages to knights of the shire, forasmuch as they and their ancestors, tenants of the same manor, had, from time beyond memory, been always exempted, by custom, from the expences of knights, sent by the community of their county to the parliaments of the king, and of his royal progenitors.

V. Appendix
to the second
part of this
third volume
of the history
of England,
p. 60,
61.

The words are, as cited by Mr. Tyrrel: "*Quod licet ipsi et eorum antecessores tenentes de eodem manerio de F. (quod est de antiquo dominio coronæ Angliæ) a tempore quo non extat memoria semper hactenus quieti esse consueverunt de expensis militum ad parlamenta nostra, et progenitorum nostrorum, regum Angliæ, pro communitate dicti comitatus venientium,*" &c. Mr. Tyrrell gives in English the rest of the writ, which goes on thus: "That whereas the sheriff distrains the said tenants to contribute to the expences of the knights that came to the last parliament, to their great damage, otherwise than had been accustomed in all times past (*omnibus temporibus retroactis fieri consuevit*), therefore the king commands him that he desist from his said distress, and do not compel the said tenants to contribute otherwise *quam omnibus temporibus retroactis*" &c. After which he adds, "Now, though this writ be entered without any king's name, or date, yet it appears at the bottom, that it was issued out by G. L'Escrope then chancellor, and William de Herlston, clerk of the Chancery; and this must have been before the fifteenth year of Edward the Second, because it appears by the close rolls of that year (Rot. Claus. 15 Edw. II. m. 37. dorf. in secundâ), that in December the great seal was delivered to William D'Ayremyn, under the seals of William de Clyffe, and the said William de Herlston, clerks of Chancery, who are often mentioned in our records to have been keepers of it *pro tempore*, till the second year of Edward the Third, when the said William de Herlston had the sole custody thereof committed to him. There are other writs of this kind upon the close rolls, as particularly one directed to Sir John

" de

“ de Cobham, and four other knights therein named, Claus. 50
 “ reciting, “ That whereas Simon, archbishop of Can- Edw. III.
 “ terbury, claims, as well for himself as his predecessors, par. ii. m.
 “ and their tenants hitherto, *a tempore quo non extat* 19. dorso.
 “ *memoria*, certain lands held in *gavelkind* in the county
 “ of Kent, which ought to be free from the expences
 “ of knights coming to the parliaments of that king
 “ as well as those of his progenitors ; and then it con-
 “ cludes with a *superfedeas* to the said sheriff, not to mo-
 “ lest the said tenants, until such time as the king be
 “ further informed, and that he, by the advice of his
 “ council, hath ordained, what is to be done in the
 “ premises.” From both these writs we may draw these
 “ conclusions, first, that there was at the time of the
 “ granting these writs a claim by *prescription* time out
 “ of mind, allowed for all tenants in ancient demesne, as
 “ also for those who held of the archbishop in *gavelkind*,
 “ to be exempted from contributing to the wages of
 “ knights of the shire, or else these petitions and the
 “ writs upon them had been to no purpose ; for you
 “ must note, that all tenants in *antient demesne* and in
 “ *gavelkind* were made so before the conquest, and
 “ therefore might well plead a *prescription*, and were it
 “ not that I should be tedious, I could cite *several other*
 “ *writs of this kind*, as also pleas of certain towns to
 “ this purpose, and that not long after the time Dr. Bra-
 “ dy supposes commons were again summoned to par-
 “ liament.”

P. 300, 301. *With regard to the cities and boroughs, there
 are likewise extant two claims, made in the reign of
 Edward the Second and Edward the Third, the pro-
 ceedings upon which seem decisive of the sense of that
 age, concerning the antiquity of the custom of citizens
 and burgeses coming to parliament, and from towns
 that were held under subjects, not immediately of the
 crown ; I mean the claims of the towns of St. Albans
 and Barnstable, &c.*

The claim of the town of St. Albans, here-mention-
 ed, is transcribed at length by Mr. Madox, in his His- V. Madox's
 tory of the Exchequer, from the parliament rolls of the Hist. of the
 eighth year of King Edward the Second, and it will be Excheq. c.
 proper to give a transcript of it here. “ *Ad petitionem* 17. p. 521.
 “ *burgensium villæ de S. Albano, suggerentum regi,*
 “ *quod*

“ quod licet ipsi teneant villam prædictam de rege in capite, et ipsi, sicut cæteri burgenfes regni, ad parliamēta regis, cum ea summoniri contigerit, per duos comburgenfes suos venire debeant, *prout totis retro actis temporibus venire consueverunt*, pro omnimodis servitiis regi faciendis; quæ quidem servitia iidem burgenfes et antecessores sui burgenfes villæ prædictæ, tam tempore domini Edwardi nuper regis Angliæ, patris regis, et progenitorum suorum, quam tempore regis nunc, semper ante instans parliamentum, ut præmittitur, præstiterunt. Nomina quorum burgensium sic pro dictâ villâ ad parliamēta regis venientium in rotulis cancellariæ semper irrotulata fuerunt. Nihilominus vicecomes regis comitatûs Hertfordiæ, ad procuracionem et favorem abbatis de Sancto Albano et ejus consilium, burgenfes prædictos præmunire, seu nomina eorum prout ad ipsum pertinuit, retornare, ut ipsi servitium suum prædictum facere possent penitus recusavit, in contemptum regis et burgensium prædictorum præjudicium, et exhæredationis periculum manifestum, super quo petunt remedium opportunum.

“ R. est per consil.

“ Scrutentur rotuli &c. de canc. si temporibus progenitorum regis burgenfes prædicti solebant venire, vel non; et tunc fiat eis super hoc justitia, vocatis evocandis si necesse fuerit.”

See Petyt, Brady, Tyrrel, and others. V. Brady's Answer to Petyt, p. 38.

A great deal has been said by several learned writers about this record; and indeed the matter of it is extremely important, with regard to many points in the disputes that have arisen about our ancient constitution. Dr. Brady being desirous to elude the force of it against the hypothesis which he had laid down (viz. that no burgeses were summoned to parliament before the forty ninth of Henry the Third) says, *that those of St Albans, as appears by the words of their petition to the council, claimed not, nor prescribed to come to parliaments merely as from a borough, but as from a town that held in chief of the king; and this service was incident to their tenure, and was such as the king's progenitors had accepted in lieu of all services due by reason thereof.* Now, though we should admit all this to be true, it still proves against him, that *some burgeses* came to parliament before the forty ninth of Henry the Third, viz. *all who held in chief of the king*: for the progenitors of the father of Edward the

the Second must at least mean his grandfather and great grandfather King John and King Henry the Second : and a long usage is implied in the words *prout totis retroactis temporibus venire consueverunt*. Yet it seems to make good another part of his system, viz. *that none but tenants in chief were members of parliament*. Let us then consider how far that inference from it can be maintained. To render it conclusive we must suppose, that, if in fact the burgesses of this town were not tenants in chief, they could not have been admitted to come to parliament, either at any time before, or soon after this time. But it appears from the close rolls, that expences were allowed to burgesses of St. Albans for coming to parliament in the thirty fifth year of Edward the First, and with the clause *prout alias in casu consimili fieri consuevit* which implies an old custom. We find, indeed, by a writ to the sheriff of Hertfordshire in the fifth year of Edward the Second, that a dispute then arose, whether the town was a borough, or not, and that the abbot and bailiffs were summoned to Chancery upon that question ; but it was not determined till the eighth year of that king, in consequence of the petition recited above. And though no other answer appears in that record, than that the rolls should be examined, to see whether the burgesses used to come to parliament in the times of the king's progenitors, it may be concluded, that, upon the examination, judgment was given for them ; because there is a writ on the close roll of the eighth year of Edward the Second, for paying wages at the rate of two shillings a day to two burgesses of St. Albans ; and another of the same nature on the close roll of the second of Edward the Third. And in the first year of the same reign there are letters patent confirming a certain indenture, between the abbot of St. Albans and the burgesses of that town, wherein there is contained a final agreement of all quarrels and disputes between the said abbot and burgesses ; and the abbot does there acknowledge, that the said burgesses, whose names are there particularly set down, might chuse from among themselves two burgesses to go to every parliament ; "*Puissent d'eux-memes elire deux bourgeois d'aler au cbacun parlement.*" All these records I have carefully examined myself in the originals at the Tower.

It is therefore very evident, that the right of the
 Vol. IV. H town

V. Rot.
 Claus. 35
 Edw. I. m.
 14. dorso.

Rot. Claus.
 8 Edw. II.
 m. 13. dorso.
 Rot. Claus.
 2 Edw. III.
 m. 16. dorso.
 Pro expens.
 burgenfium.
 Rot. Pat.
 1 Edw. III.
 m. 28. p. 2.

town of St. Albans to send representatives to parliament, according to their petition, was allowed by the council of King Edward the Second, and by that of his son; nay, by the abbot himself, who had first disputed that privilege. And yet it is certain, that the burgesses held of the abbot, and not in chief of the king. We are in-

See Madox's
Hist. of the
Exchequer,
p. 522. c. 17.

formed by Mr. Madox, that, in Domesday-book, the town of St. Albans is placed among other towns and lands of the abbey, in these words *terra ecclesie S. Albani*: He further says, "I cannot find by any of the most ancient Revenue-rolls (though I have searched many of them purposely upon this matter) that it was a demesne-town belonging to the king, or rendered to the king (when the *sedes abbatis* was full) any ferm, aid, tallage, or other duty, as all the rest of the king's towns did, from time to time. A sure token that the townsmen did not hold it immediately of the king."

What then becomes of Dr. Brady's hypothesis, that none but tenants in chief came to parliament, and that the burgesses of St. Albans might be entitled to that privilege as tenants in chief, but could not have enjoyed it upon any other claim? Mr. Madox has shewn, that they were not tenants in chief; and yet it is proved, by the records above-cited, that their right of coming to parliament was allowed as a privilege, which they had possessed from time immemorial. Mr. Madox indeed supposes, "that

V. Hist. of
the Excheq.
p. 523. c. 17.

the town of St. Albans was granted to the abbey by one of the ancient kings of England: the abbot and convent held the town in capite, or immediately of the king (in burgage) as parcel of the endowment of the abbey, and they held the town or burgesses in demesne, or (if you please) the burgesses were demesne-men of the Abbey." But admitting this supposition, which is only a mere conjecture (for he had said before, that he found no proof in any of the most ancient Revenue-rolls that it was a demesne-town belonging to the king) it still appears, that, although the abbot held immediately of the king, and might have a right to sit in parliament on that account, as a tenant in chief, yet the town held of him, and not immediately of the king: the townsmen were his demesne-men, not tenants in chief, or demesne-men of the crown. And therefore this transaction, not only disproves the assertion of Dr. Brady, that none but tenants in chief had a right of sitting in parliament before

before the forty ninth of Henry the Third, but also shews he is wrong in the account that he gives of the foundation of the right of cities and boroughs to send representatives to that assembly in and after the twenty third of Edward the First, before which time he denies that they ever had been summoned in a regular manner. His words are these: " Having thus proved the time
 " when, and the cause why, citizens, and burgessees, and
 " the tenants of the king's demesnes, were at first sum-
 " moned to parliament, we shall proceed to discover,
 " what cities and burghs sent their representatives, or
 " citizens and burgessees, upon such summons. The
 " answer to this is very short, *That they were only the*
 " *dominicæ civitates and burgi regis, the king's demesne*
 " *cities and burghs, such as had charters from the*
 " *king, and paid a fee-farm rent in lieu of the customs,*
 " *and other advantages and royalties that belonged to the*
 " *crown," &c.*

Now it plainly appears, that the borough of St Albans does not answer this description in any respect. *It was not a demesne city or burgh of the king in the twenty third year of Edward the Second. It had no charter from the crown, nor did it pay a fee-farm rent in lieu of the customs, &c. that belonged to the crown.* The hypothesis of the Doctor is therefore evidently as false with regard to the *right* as to the *time* of citizens and burgessees coming to parliament. And it cannot be supposed, that the burgessees of this town were summoned to parliament without any right, by the favour of the sheriff, after the eighth of Edward the Second; because it appears by the records above-mentioned, that their claim had been disputed, and judicially determined: so that here was no room for partiality in the sheriff, as in other cases, where no dispute had arisen. The king's council, before which the cause had been tried, would have refused to admit the return of such burgessees to subsequent parliaments, if their right to be summoned had not been clearly made out: but, if their claim had depended on their being *tenants in chief of the crown*, it is evident, *that they could not have had any such right, as they were not such tenants.* It is true, that, in their petition they say, *they held their town in chief of the king, and speak of their coming to parliament as a service that was incident to their tenure:* but, though

NOTES TO THE SECOND BOOK OF

this was a false suggestion, yet their right to come to parliament by ancient usage and prescription, *sicut ceteri burghenses regni, prout totis retroactis temporibus venire consueverunt*, might be very good. And therefore the answer was, *Scrutentur rotuli, &c. de cancellariâ si temporibus progenitorum regis burghenses prædicti solebant venire, vel non. Et tunc fiat eis super hoc justitia, vocatis evocandis, si necesse fuerit.* This was putting the cause entirely on prescription, not on their being proved to be tenants in chief of the crown. Domesday-book and the Exchequer records should have been searched, instead of the Chancery rolls, if *that* had been the question. In fact it appears, that they continued to hold immediately of the abbot, not of the crown, and yet came to parliament, with other burgesses, after this time; the abbot himself being obliged to allow their right to the privilege, which in all probability he would not have disputed, if they had not involved it with another unwarrantable pretension, which he could not admit. Mr.

See History
of the Ex-
cheq. p. 522.
note.

Madox says, *he had not yet found, that any town, city, or burgh in England, did in ancient time hold of the king, or of any other lord, upon these terms, viz. to be quit of all prestations and services by sending burgesses to parliament.* He might likewise have added, that no tenant in capite held on such terms. And therefore the claim of these burgesses to hold in capite of the king by the service of coming to parliament *pro omnimodis servitiis regi faciendis*, was undoubtedly false. Accordingly it was rejected; but yet their right to come to parliament was allowed and established. I would also observe, that their complaint to the council against the sheriff of Hertfordshire, for having refused to return them, though the names of the burgesses sent by them to parliament had always been enrolled in the Chancery rolls, overturns

See Brady on
Boroughs,
p. 52.

the position advanced by Dr. Brady, and supported by many others, *that it was left to the sheriff of every county, to name and direct which were boroughs, which not, by those indefinite and general words in the writ, "de quolibet civitate duos cives, et de quolibet burgo duos burghenses, &c. eligi facias."* For if sheriffs had really, a right to do this, and no rule to proceed by, but their own arbitrary discretion, the townsmen of St. Albans had no reason to complain, that the sheriff of Hertfordshire had refused to return any burgesses from their town,
even

even though it had been true that they held it of the king. But they speak of his refusal as a grievous offence, *in contemptum regis, et burgensium prædictorum præjudicium, et exbaredationis periculum manifestum, super quo petunt remedium opportunum.* Indeed to suppose such a power in that officer is repugnant to reason, and expressly contradicts the words of a statute made in the fifth of Richard the Second, which declare, that if any sheriff shall from thenceforth be negligent in making his returns of writs of the parliament, *or leave out of the said returns any cities or boroughs, which be bound, and of old time were wont to come to the parliament, he shall be punished in the manner as was accustomed to be done in the said case in the said time past.* The sheriffs, in fact, did frequently neglect to return any burgesses for the poorer and meaner boroughs, which could not easily bear the charge of their wages; and this was connived at, when it was done on good reasons; but still it evidently appears by the statute here-cited, *that they had no right to do so,* and that when they ventured to do it *improperly or injuriously,* they had been often complained of and punished for it, *before the making of that statute.* They must therefore have had some rule to direct them therein: and as they certainly had no power to create a new borough, so they could not be justified in not making a return from any of those, *which were bound, and of old time were wont to come to the parliament,* unless by loss of trade, or from any other cause, they were so much decayed, as not to be able any longer to support the expence of maintaining their members. In that case alone it might be equitably judged, *that they were not bound to come to parliament, propter debilitatem eorum et paupertatem.* And the sheriff might be allowed to determine of *this exemption,* upon his own knowledge, but at his own peril. Mr. Tyrrel has well observed on the words of the statute above-cited, *that if the first constant appearance of citizens and burgesses in parliament were but in the twenty third of Edward the First, from that time to the fifth of Richard the Second, was not eighty five years; and THAT, being within the memory of many men then alive, could not be called OF OLD or ANCIENT TIME, in the French, D'ANCIENTE.* Nevertheless there is reason to believe, that the same form of summons had not always been used;

See Tyrrel's
Appendix to
his History of
England,
p. 193.

because it appears, that, in the forty ninth of Henry the Third, the writs were not sent to the sheriffs, but directly to the cities and boroughs.

Having now considered the claim of the town of St. Albans, I shall transcribe some records in the Tower of London concerning a petition in parliament to king Edward the Third, from the town of Barnstaple in Devonshire, wherein they set forth, that, among other privileges granted to them by a charter of King Athelstan, they had from that time enjoyed the right of sending two burgesses to serve for them in parliament. And first I shall

See Escheat
Bundle 18
Edw. III.
dated June
23. Rego. 14.
n. 100.

give an extract from the writ of inquisition founded on that petition, which is recited therein. “Sciatis, quod, cum nuper ad prosecutionem burgensium villæ de Barnstaple in com. Devon. per petitionem suam coram nobis et consilio nostro exhibitam nobis supplicantium, ut cum villa prædicta, à tempore cujus contrarii memoria non existit, liber burgus fuerit, iidemque burgenses, et eorum antecessores, burgenses villæ prædictæ diversis libertatibus et liberis consuetudinibus, per cartam celebris memoriæ D. Athelstani, dudum regis Angliæ, progenitoris nostri, quæ ad liberum burgum pertinent à tempore consecutionis dictæ cartæ usi fuerunt et gavis, in hoc, viz. quod tenementa sua in eodem burgo in testamento suo in ultimâ voluntate suâ quibuscunque voluerint legare, et majorim de se ipsis, coram quo omnia placeta dictum burgum et suburbium ejusdem tangentia placitari et terminari debeant, eligere, ac ad singula parlamenta nostra, et dictorum antecessorum nostrorum, duos burgenses pro communitate ejusdem burgi mittere, nec non in singulis taxationibus, &c. consueverunt:” therefore the king ordered an inquest to be made into the truth of the facts therein alledged, and particularly si carta illa fuerit amissa, as the petitioners had set forth, and whether it would be proper to grant them another, confirming to them the same liberties, as they had desired.

Ibidem.

In the return to this the jurors say, “Burgenses dictæ villæ ad singula parlamenta duos burgenses pro communitate dicti burgi mittere solebant; item dicunt, quod nihil eis constabat de carta D. Athelstani, dudum regis Angliæ, prædictis burgensibus, seu eorum prædecessoribus, de diversis libertatibus seu consuetudinibus prædictis, ut asserunt, concessis.” This not satisfying the burgesses, they obtained a writ ad quod dam-

num,

num, to enquire si prædicti burgenſes dictas libertates eis per cartam prædicti Athelſtani, ut prædicitur, conceſſas, a tempore prædicto uſi fuerunt et gaviſi, et ſi carta illa in formâ prædictâ fuerit amiſſa; nec non ad quod damnum ſeu præjudiciũ noſtrum aut alterius cujuſcunque cederet, ſi nos dictas libertates eiſdem burgenſibus per cartam prædicti Athelſtani, ut aſſerunt, conceſſas, nec non prædictas libertates per eos de novo petitas, prout ſuperius continentur, per cartam noſtram concedamus ſibi et hæredibus et ſucceſſoribus ſuis in perpetuum poſſidendas; et ideo vobis mandamus, quod ad certos dies et locos, quos uas tres, vel duo veſtrum, ad hoc provideritis, inquiſitionem illam ſuper præmiſſis et eâ tangentibus in formâ prædictâ faciatis, &c.

Dated 12,
May. 17
Edw. III.

The return of this writ is as follows: "Inquiſitio capta apud Barnſtæple coram Hamone de Derworthy et Joan. de Baumfeld, juſticiariis D. regis ad inquiſitionem illam capiendam unâ cum Joanne de Stonford et Ricard. de Hankeſton, in præſent. Walteri de Horton, Vicecomitis Devon. die Sabbat. &c. an. regni Edw. regis Angliæ tertii 17, &c. per ſacramentum R. de Wolfe, &c. qui dicunt ſuper ſacramentum ſuum, quod villa de Barnſtæple eſt liber burgus, et fuit a tempore quo non eſtat memoria. Item dicunt quod burgenſes villæ prædictæ, et eorum antecęſſores diverſis libertatibus et liberis conſuetudinibus per cartam celebris memorie D. Athelſtani, dudum regis Angliæ, progenitoris D. regis nunc, quæ ad dictum burgum pertinent, a tempore conſecutionis cartæ prædictæ ſemper hæcenus uſi fuerunt et gaviſi, et adhuc gaudent et utuntur, videlicet quod tenementa ſua, &c. &c. ac ad ſingula parlamenta D. regis dups burgenſes pro communitate ejusdem burgi mittere, nec non in ſingulis taxationibus, &c. conſueverunt. Dicunt etiam, quod prædicta carta, de prædictis libertatibus et conſuetudinibus, eiſdem burgenſibus per prædictum D. Athelſtanum facta, casualiter fuerit amiſſa. Item dicunt quod non eſt ad damnum ſeu præjudiciũ D. regis aut alterius cujuſcunque, licet D. rex per cartam ſuam omnes libertates prædictas eiſdem burgenſibus et hæredibus, &c. per cartam prædictâ. Athelſtani prius conceſſas concederet in perpetuum poſſidendas."

Dated 17.
Edw. III.

Nevertheless another writ of the following year, after reciting the proceedings had upon the two former writs,

says, that, upon complaint having been made, that the latter return had been artfully and unduly obtained, "Nos advertentes, quod hujusmodi libertates absque gravi præjudicio nostro et damno et præjudicio aliorum non possunt concedi hominibus supradictis, præsertim cum dicta villa de nobis teneatur in capite, ut accepimus, et custodia ejusdem, nomine custodiæ, ad nos et hæredes nostros devolvi, firmaque comitatus prædicti in parte diminui, et alia incommoda tam nobis, quam aliis, evenire possent, volentesque eo prætextu super hiis plenius informari, assignavimus," &c.

The return to this inquisition finds, that *Joannes de Audley* held this borough of the king *in capite per baroniam*, contradicts the finding of the former returns in many points, and particularly says, "*Quod nichil eis constat nec constabat de cartâ D. Athelstani dudum R. Angliæ, per quam prædicti burghenses prætendunt sibi et eorum prædecessoribus quasdam fuisse libertates concessas.*" But with regard to their right of sending burgesses to serve for them in parliament *from time immemorial*, which the two former returns had acknowledged and confirmed, it says nothing. And we find that they continued to send them uninterruptedly after this time, without any new charter or franchise granted to them, but purely by *prescription*,

Now, granting that the pretended charter of Athelstan, the existence of which is admitted by the second of these returns, but left doubtful by the first and last, did never exist, yet still these records are of great importance to the question of which I am treating. For, if no burgesses had been sent to parliament before the forty ninth year of King Henry the Third, how is it possible that the *Concilium Regis*, within fourscore years after that remarkable epocha, viz. in the seventeenth of Edward the Third, should have suffered that prince to order an inquisition to be made into the truth of an allegation so apparently false, as that the burgesses of Barnstaple had enjoyed a right of sending two members to serve for them in all the parliaments of his royal predecessors *from the time of King Athelstan*? or what evidence could induce jurors, upon the second inquisition before two of the king's justices and the sheriff of Devon, to find a fact which the whole county, and indeed the whole kingdom, must have been able to contradict from

from publick notoriety? The absurdity would be still greater, if the practice of summoning burgeses to parliamentary meetings be dated from the twenty third of Edward the First, as it is by many writers. But the clear inference from these proceedings appears to be, that the custom of sending members from cities and towns to parliaments, or great councils, was then known to be ancient; and the question was whether Barnstable was entitled to that privilege, either by charter or prescription. In the final issue we find, that, with regard to the charter, which the burgeses of that town pretended to have lost, sufficient proof was not given; and therefore the other privileges which they claimed in virtue thereof, were not confirmed or renewed: but this of sending representatives to serve for them in parliament was admitted to be good, *from long usage and prescription*, though it was determined that they did not hold immediately of the king, but were the tenants of John de Audley, one of his barons, who held the borough of him *in capite* by baronial service. From whence it is evident, that the right of sending members to parliament was not confined to a *tenancy in chief of the crown*, but might belong to *subvassals*.

I shall conclude this note with a passage from the great antiquary, Mr. Lambard, in his *Archaionom*. “Now as these written authorities” (viz. the Saxon laws he had quoted) “do undoubtedly confirm our assertion of the continuance of this manner of parliament, so is there also unwritten law, or prescription, which does no less uphold the same: for it is well known, that in every quarter of the realm a great many boroughs do yet send burgeses to the parliament, which are nevertheless so antient, and so long since decayed and gone to ruin, that it cannot be shewed they have been of any reputation since the conquest, and much less that they have obtained this privilege by the grant of any succeeding king: so that the interest which they have in parliament groweth from an antient usage before the conquest, whereof they cannot shew any beginning.”

P. 301. By a statute of the fifth year of Richard the Second it is enacted, “that all and singular persons and commonalties, which from henceforth shall have the summons of the parliament, shall come from henceforth to the parliaments in the manner as they are bound

“to

"to do, and have been accustomed, within the realm
"of England, of old times," &c.

See Harley's
Mss in the
British Mu-
seum, class
II. pref. 1.
Shelf B.

Besides this remarkable testimony of the whole legisla-
ture in the reign of Richard the Second, to the anti-
quity of the custom of the commons coming to the par-
liament, we have a petition of the commons in the
second parliament of the reign of Henry the Fifth, which
sets forth to that prince, "that, as it hath ever been
their libertie and freedom, that there should no sta-
tute or law be made, unless they pass thereto their as-
sent, considering that the commune of your land, the
"which is *and ever hath been* a member of your parlia-
ment, be as well assenters as petitioners," &c.

Ibid. "And if any person of the same realm, which from
"henceforth shall have the said summons, be he arch-
"bishop, bishop, abbot, prior, &c. do absent himself,
"and come not at the said summons (except he may
"reasonably and honestly excuse himself to our lord the
"king) he shall be amerced and otherwise punished,
"according as of old times hath been used to be done
"within the said realm in the said case."

In the twelfth of Richard the Second, the abbot of
St. James's Northampton, being summoned to parliament,
petitioned to be discharged, because he was not a tenant by
barony, nor in chief of the king. The words are these:
"Non tenet per baroniam, nec de rege in capite; sed
"tantum in puram et perpetuam elemosynam; et nec
"ipse abbas, nec predecessores sui, fuerunt ad parlia-
mentum citati huc usque. Unde petit remedium et ha-
"buit." Again, in the twenty sixth year of Edward
the Third, the abbot of Leicester was discharged from
all attendance in parliament on the like suggestion, because
he held not of the king *per baroniam seu alio modo, per
quod ad parlamenta seu concilia nostra venire teneatur.*

V. Rot. Pat.
26 Edw. III.
p. 2. m. 22.

I would observe on these records, that, as before the
reign of William the Conqueror all ecclesiastical digni-
ties, as well those which held of the king as others, were
ad puram et perpetuam elemosynam; and as the alterations
made by William affected only those which held immedi-
ately of the crown, it is no wonder that men who were pos-
sessed of such dignities *not holden of the crown*, and who much
desired an exemption from all secular services, should not
acquiesce in an extension of that alteration; and therefore
these abbots very properly petitioned against being sum-
moned to parliament contrary to the privilege of their tenure;
and

and the king answered very justly to the petition of the latter, that *nolentes illum indebite vexari* he discharged him from that service. But nothing can be inferred from hence to prove the positions, which some writers have laid down, that no freeholders had antiently a share in the legislature, except *tenants in chief*, and that all service in parliament was then considered no otherwise than as a trouble and burthen, which every member of parliament desired to be exempt from, and endeavoured to avoid.

The statute itself, which is the subject of this note, has been alledged as an argument, to shew how unwillingly our parliaments were attended, when it was necessary to enforce the performance of that duty by a particular law: but the disturbed and tumultuous state of those times, when it was dangerous to pass from one part of the realm to another, may better account for this statute; and that the chief object of it was to enforce the attendance of the *spiritual barons*, I think very probable; as we know, that their desire of a total separation from the laity in all acts of government, made them remiss in the performance of their duty.

Indeed, some time before, namely, in the eighteenth year of Edward the Third, notice is taken in the record of parliament, *that sundry of all estates were absent from the parliament and convocation then assembled*: “at which (says the record) the king did no less muse, than he was thereat offended: wherefore he charged the archbishop, for his part, to punish the defaults of the clergy, and he would do the like touching the parliament.” (See Cotton’s Abridgment of the Records, p. 43.) But the king’s surprise on this occasion, as well as the offence that it gave him, shews, that such absence was unusual, and must certainly have had some extraordinary cause. It was customary in those times, if the parliament was not quite full at the first meeting, to adjourn for a day or two, till the absent members came in; and by the records it appears, that the lords sometimes, and the commons frequently, were called by name the first day of the parliament’s sitting, and such of them as were absent without just cause were both blamed and fined. Even in our days it is necessary to enforce the attendance of members by calls of the house, and sometimes by the punishment of those who disobey them.

V. Prynne’s
Preface to
Cotton’s Abridgment
of the Records in the
Tower.

P. 301, 302. But besides these authorities, drawn from statutes and records, very evident indications of the presence of the people in the national councils, and of their being constituent parts thereof, though, indeed, in a confused, disorderly manner, are to be found in some ancient histories, and contemporary accounts of transactions in parliament, during the times which I write of; viz. from the death of Edward the Confessor to that of Henry the Second.

Gervase of Canterbury, speaking of the promotion of Lanfrac to that metropolitan see, in the reign of William the Conqueror, says it was done, "*Eligentibus eum senioribus ejusdem ecclesiæ, cum episcopis et principibus, clero et populo Angliæ, in curia regis*". Here the *clerus* et *populus* are mentioned separate and distinct from the *episcopis et principibus*, and therefore cannot, by any natural construction, be understood to mean the same persons. Moreover, in the account of the same transaction, published at the end of Taylor's Gavelkind, it is said, that the king committed to Lanfrac the church of Canterbury, "*consensu et auxilio omnium baronum suorum, omniumque episcoporum et abbatum, totiusque populi Anglicani*." These words seem to afford a very evident testimony, that the people were present in these parliaments, and acted therein, conjointly with all the spiritual and temporal barons. But in the Chronicle of Litchfield, and likewise in Roger de Hoveden, mention is made of one that was very particular. The

Wilkins
Leg. Anglo-
Saxon. p. 216
and Seldeni
Not. ad
Edm. p. 171

words of the Chronicle of Litchfield are these; "*Anno Gulielmus regni sui quarto, apud Londonias, consilio baronum suorum fecit summoneri per universos Angliæ comitatus omnes nobiles, sapientes, et suâ lege eruditos, ut eorum leges et consuetudines audiret, &c.* Under "*per præceptum regis Willielmi electi sunt de singulis, totius Angliæ comitatibus XII viri sapientiores, quibus jurejurando injunctum fuit, coram rege Willielmo, ut quoad possent recto tramite, neque ad dextram neque ad sinistram partem divertentes, legum suarum consuetudinem et sancita patefacere, nil prætermittentes, vel prævaricando mutantes.*" The account in Roger de Hoveden is to the same effect, with very little difference in the expressions. The Lord Chief Justice Hale

v. Hoved.
Annal. f.
343.

P. 104. 107. says, in his History of the Law, *This appears to be as sufficient and effectual a parliament as ever was held in England,*

England. Nevertheless it must be noted, that the election of twelve men from every county does not appear to have been usual in parliaments, or great councils: at least we have no account, in any record or history, of just *that number* having been sent upon any other occasion.

Eadmer, who lived in the reign of William Rufus, has ^{V. Eadmer.} given an account of a parliament held under that prince, ^{hist. nov.} on an extraordinary occasion, viz. for the determining of ^{l. i. p. 26,} a dispute between the crown and Archbishop Anselm, on a question of great importance to the church and the state. He calls it *placitum, quod totius regni adunatione apud Rockingham habitum est*. He was present in it himself, and has set down all the particulars of what was done there. The general description of the assembly is in much the same terms, as other Historians of that age were accustomed to use in describing our parliaments: *Episcopus, abbatibus, cunctisque principibus una cœuntibus, &c.* But besides these he takes notice of a great multitude of monks, clergymen, and laymen, who were present, and assistant, and to whom, as well as to those of a superior rank, the archbishop addressed his discourse. “Anselmus autem episcopis, abbatibus, et principibus ad se à regio secreto vbcatis, “*eos et assistentem monachorum, clericorum, laicorum, numerosam multitudinem hac voce alloquitur.*” From what follows it is evident, that he submitted the question, for the discussion of which the parliament had been called to the determination of the whole assembly. “*Omnes, dico qui hic congregati estis, pro vobis opem vestri consilii ferte.*” He applied indeed more particularly to his brethren, the bishops; “*Omnes itaque, sed vos præcipue, fratres et cœpiscopi mei precor et moneo, quatenus istis diligenter inspectis, studiosius, sicut vos decet, quo inniti queam mihi consilium detis.*” But this no more excluded the rest of the assembly from giving their opinion on the question in dispute, than it did the temporal barons. On the contrary, the beginning of this paragraph says that *all* were desired to bear and consider it, in order to form their advice to Anselm upon it. It appears, that, at first, all the spiritual and temporal lords, and perhaps other chief men, comprehended under the word *principes*, here used by Eadmer, were with the king in an inner room: from whence they were called into the church of the castle, which was the place

place of the general assembly, to hear the question proposed to them by Anselm. "Anselmus autem episcopus, abbas, et principibus ad se à regio secreto vocatis, eos et assistentem monachorum, clericorum, laicorum, multitudinem, hac voce alloquitur." And they occasionally went backwards and forwards, several times, in the course of the deliberation. "Omnes igitur assidentes oppido turbati, cum magno tumultu surrexerunt, &c. Quibus dictis ad regem reversi sunt." And afterwards, "Facta itaque longâ morâ redeunt episcopi cum nonnullis principibus à rege decentes," &c. And again, "reversi ad regem persuaserunt inducias nullâ ratione dandas, &c. Cum igitur (episcopus Dunelmensis) regi persuassisset quæsitâs inducias Anselmo non esse dandas, committatus quam pluribus, qui verba sua suo fulcirent testimonio, ad virum ingrediens ait, Audi querimoniam regis contra te," &c. And upon hearing Anselm's answer, they again returned to the king, "Quibus auditis, aspicientis se invicem, nec invenientes quid ab ista referrent, ad dominum suum reversi sunt." While they were with the king, they, at first, consulted together with some regularity; but afterwards talked to one another, without order, and in small, separate parties. "Ad quæ rex vehementer iratus cum episcopis atque principibus intentissimè me quærere cæpit quid dictis ejus obicere possent, nec invenit. Scandalizati ergo inter se ab invicem sunt in partes divisi, et hic duo, ibi tres, illic quatuor in unum consiliabantur," &c. These Eadmer calls afterwards *conciliabula*, and certainly they were not agreeable to the regular forms either of a council or a parliament. But when, in consequence of what had been thus irregularly determined, the bishop of Durham, with all his brethren, and many of the temporal nobles, had spoken very strongly before the whole assembly, against Anselm, and after hearing his answer had returned back to the king, a murmur arose, from all the multitude in the church, upon the wrong done to that prelate. Yet they only complained of it, in a low voice to each other, none of them daring to speak openly for him, out of fear of the king, whom Eadmer calls the Tyrant. But at last a knight, or military tenant, miles unus, coming forth from the multitude, which seems to have been thronged promiscuously together, knelt down before Anselm, and in the name of them all entreated him not to be disturbed at what had been said

said to him, &c. whereupon (says the Historian) Anselm understood, *that the opinion of the people was with him*; at which he and those who belonged to him were much rejoiced and encouraged, trusting, to the Scripture, *that the voice of the people was the voice of God.* “*Ortum interea murmur est totius multitudinis pro injuriâ tanti viri summissa enter se voce querentis. Nemo quippe palam pro eo loqui audebat, ob metum tyranni. Veruntamen miles unus, de multitudine prodiens, viro astitit, flexis coram eo genibus dicens, Domine pater, rogant te per me supplices filii tui ne turbetur cor tuum ex iis quæ audisti, &c. Quæ verba dum pater comi vultu accepisset, intellexit animum populi in sua sententia secum esse. Gævisi ergo exinde sumus, et æquanimiores effecti, confidentes juxta scripturam, vocem populi vocem esse Dei.*” Whether, in the *multitude*, from which this *miles* came forth, and in whose name he spoke to Anselm, any or all the representatives of counties, cities, and boroughs, were comprehended; or whether any such were included in the general denomination of *proceres et principes regni*, is not sufficiently clear from this passage. It appears, that Anselm sat in the midst of the *proceres* and of the *multitude thronged together.* “*Anselmus in medio procerum et cinglobatæ multitudinis sedens ita orsus est,*” &c. Eadmer, who was chaplain to Anselm, seems to have had a seat near him, “*Mane autem reversi sedimus in solito loco expectantes mandatum regis:*” but this seat might be granted to him, upon this occasion, rather for the convenience of that prelate, than in his own right. However this may have been, it is evident from the passages recited above, that many regular and secular clergymen, and many laymen of a degree inferior to the *proceres et principes regni*, were present and assistant in this great council. I need not observe that even now, when the two houses are together in the same place, the peers *sit*, and the commons *stand*.

The same contemporary author gives us also an account of a parliament held in the year 1100, by King Henry the First, wherein “*tota regni nobilitas cum populi numerositate Anselmum inter se et regem medium fecerunt, quatenus ei, vice sui, manu in manum porrectâ, promitteret justis et sanctis legibus se totum regnum, quoad viveret, in cunctis administraturum.*” This promise which may be called a confirmation of his charter under

der the guarantee of Anselm, being solemnly given in parliament, at the desire of the whole nobility of the kingdom and of a numerous assembly of the people, who are spoken of as present and concurring with the former, is another strong evidence, not only of the attendance of the commons in the parliaments held during those times, but of their taking part in the business transacted therein, and being considered as members of the great council of the nation. It appears, that this meeting was in solemnitate Pentecostes, when the nobility met of course; but I have observed before, that it was frequently the practice of those times to convert those lesser assemblies into full and compleat parliaments, by summoning the commons to attend them.

V. Eadm.
hist. nov. l.
v. p. 111,
113.

In the year eleven hundred and fourteen a great council was convened by Henry the First, in which Radulph bishop of Rochester was elected archbishop of Canterbury. The monks of Canterbury, in their epistle to the pope on that subject, which the before-mentioned Historian has given us, wrote thus: "*Adunato con-*

ventu totius Anglici regni in præsentia gloriosi regis nostri, Henrici, electus à nobis, et clero, et populo est ad regimen ipsius ecclesiæ Radolpbus, &c. Huic electioni affuerunt episcopi, abbates, et principes regni, et *ingens populi multitudo*, consentiente domino nostro rege, et eandem electionem laudente, suæque auctoritate corroborante." The mention here made of a mul-

titude of people assisting together with the bishops, abbots, and nobles, or chief men of the kingdom, in election of a primate, which appears to have been made in full parliament or (to use the words of the letter) in an assembly of the whole kingdom, is an authority which much corroborates the passages above-cited. I will add, that we have a letter from King Henry the First to the pope, on another occasion in which he says, "Notumque habeat sanctitas

W. Epist.
Hen. reg.
in Chron.
Brompton,
p. 999.

vestra, quod, me vivente, Deo auxiliante, dignitates et usus regni Angliæ non minuentur. Et si ego, quod absit, in tantâ me dejectione ponerem, *optimates mei, immo totius Angliæ populus id nullo modo pateretur.*"

From these words it appears, that this king himself was of opinion, and made no difficulty of declaring to the pope, that he could not give up the dignities and customs of his kingdom without the consent of the nobility and people of England: a very strong proof, both that our monarchy was not then absolute, but limited by the parliament; and that

that the *limiting power* was vested in the *people*, as well as in the *nobles*.

I come now to consider the reign of King Stephen with relation to this point. Of a great council, or parliament, held in the first year of that king, Henry of Huntingdon, a contemporary historian, writes thus: "Rediens autem inde rex Stephanus in Quadragesimâ tenuit curiam suam apud Londoniam in solemnitate Paschali, quâ nunquam fuit splendidior in Angliâ *multitudine*, magnitudine, auro, argento, gemmis, vestitu, omnimodâ dapnitate." By these words it appears, that this was a council held as usual, at Easter, and one of the fullest that had ever been seen in England. The contemporary author of the Acts of King Stephen speaks also of the same assembly in the following words: "Omnibus igitur summatibus regni fide et jurejurando cum rege constiteris *edito per* Angliam promulgato, summos ecclesiarum duces cum primis populi ad concilium Londonias convocavit. Illis quoque quasi in unam sentinam illuc confluentibus, Ecclesiarumque columnis sedendi ordine dispositis, vulgo etiam confuse et permixtim, ut solet, ubique se ingerente, plura regno et ecclesiæ profutura, fuerunt et utiliter ostensa, et salubriter pertractata. De ecclesiæ siquidem statu in melius componendo, de ejusdem libertate multiplicius restauranda splendide non nulla in ipsâ regis præsentia perorarunt," &c. This is a very remarkable passage. It appears by it, that the king had summoned to this council the prelates or governors of the church, with the chief of the people; ecclesiarum duces cum primis populi. But there was in the assembly a lower order of people called, by this writer, *vulgus*, who did not sit, as the prelates and nobility did, in an orderly manner, but crouded in *confusedly* and *promiscuously*, according to custom. "Ecclesiarumque columnis sedendi ordine dispositis, vulgo etiam confuse et permixtim, ut solet, ubique se ingerente," &c. Now this perfectly well agrees with the expressions of *populi numerositas, conglobatæ multitudinis, et assistentem monachorum, clericorum, et laicorum numerosam multitudinem*. But I suspect there is an error, either of the press or of the manuscript from whence it was printed, in the first part of the sentence. Instead of *illis quoque, quasi in unam sentinam, illuc confluentibus*, I think it should be *aliis*. And then it will run thus: "Edito per Angliam promulgato, summos ecclesiarum duces res cum primis populi ad concilium Londonias convocavit."

VOL. IV. I Aliis

V. Gest.
Stephan.
regis apud
Du Chesne,
P. 932, 933.

“ Aliis quoque, quasi in unam sentinam, illuc confluentibus, ecclesiarumque columnis sedendi ordine dispositis,” &c. This is much better sense; and then it will appear from the whole passage so corrected, that the chief of the clergy and laity having been summoned to attend this council, by the king’s edict, or mandate, published over all England, others of an inferior degree came in also, confusedly and promiscuously, as they had been used to do on such occasions. This historian indeed has mentioned only the prelates as *sitting* in the assembly; but it must be understood that the lay nobility, of all ranks and degrees, enjoyed the same distinction. We also find, that in this parliament the king was personally present at all the debates, and not, *in secreto regio*, with the nobles alone, as in that described by Eadmer, but together with the *vulgus*. “ *Vulgo etiam confuse et permixtim, ut solet, ubique se ingerente, plura regno et ecclesiæ profutura fuerunt et utiliter ostensa, et salubriter pertractata*. De ecclesiæ siquidem statu in melius componendo, de ejusdem libertate multiplicius restaurandâ splendide nonnulla in ipsâ regis præsentia perorarunt.” Nor is any distinction made, or intimated, as if the decision, or even the discussion, of the matters agitated before him, in this mixed assembly, was confined to the nobles. Yet they were points of the highest nature; and, if the constitution in those times admitted the *vulgus* to participate in such consultations, we may confidently assert, that a popular power was mixed with the aristocratical in the great councils of the nation. But we must not suppose that this *vulgus*, or the *populi numerositas* before-mentioned, included any persons who were not *free members of the community*; such as originally had a right to assist in great councils. Our parliaments under the government of the Normans were *contracted images* of the general assemblies held in open plains by the first founders and lawgivers of the English nation. And they still retained a great deal of the confusion and irregularity natural to those assemblies.

V. Gerv.
Chron: sub
ann. 1157.

In the year 1157, a parliament was called to meet at Northampton by King Henry the Second, of which Ger-
vase of Canterbury, a contemporary writer, gives this description. “ *Convocati sunt ad eum præsules et principes regni, aliaque inferioris ordinis personæ apud Northamptoniam*. Post varios autem sermones, *et regni negotia*, actum est etiam de professione Silvestri abbatis archiepiscopo Cantuariensi faciendâ.” The *aliaque inferioris*

oris ordinis personæ, mentioned here after the *præsules et principes regni*, as convened by the king, were, I presume, the inferior tenants in chief of the crown, and such representatives of the commons as were summoned to parliament, but were not of a rank and dignity to be reckoned among the nobility.

Matthew Paris mentions a controversy between the P. 83. bishop of Lincoln and the church of St. Albans, which was decided in a great council held at Westminster under King Henry the Second, in the year 1162, at which were present the king himself, the two archbishops, nine bishops, the earl of Leicester justiciary, with earls, barons, abbots, *archdeacons, et innumera turba regni*.

Soon after this was held the famous council of Clarendon, which Mr. Selden calls *that great parliament*. It is v. Steph- termed by Fittstephen, a contemporary writer, *generale* vid. in viis *concilium*. Matthew Paris, in reckoning up the several S. T. persons in this council, who swore to observe the laws there enacted, says, “*Archiepiscopi, episcopi, abbates, priores, clericus, cum comitibus, baronibus, et proceribus cunctis juraverunt*,” &c. Now *clericus*, being thus named after archbishops, bishops, abbots and priors, shews that other clergymen of a rank inferior to these were present in that council. The same historian says it was held *in præsentia regis Henrici, præsidente Johanne de Oxonia*. This is the only mention I meet with, of the person who presided in any parliament of those times. John of Oxford was then of no higher dignity than king’s chaplain.

In the preamble or preface to the Constitutions of Cla- 7. Consti- rendon, it is said, “*Facta est ista recognitio coram archiepis et episcopis, et clero, et comitibus, et baronibus, et proceribus regni*. Et eadem consuetudines recognitas per archiepiscopos, et episcopos, et comites, et barones, *et per nobiliores et antiquiores regni, Thomas Cantuariensis, &c. concesserunt*,” &c. And at the end of them, “*Facta est autem prædictarum consuetudinum et dignitatum recordatio regiarum, a præfatis archiepis, et episcopis et comitibus, et baronibus, et nobilioribus et antiquioribus regni, apud Clarendonam*,” &c. In these descriptions, which are short and general, like all the others of our ancient laws and statutes, the words of the most uncertain signification are the *proceres* and the *nobiliores et antiquiores regni*, mentioned after earls and barons. I am inclined to believe, from the

ut. in
Append.

authorities before-cited, and others that will hereafter be given on this subject, that these *proceres et nobiliores regni* were the tenants in chief of the king below the rank of barons, the knights of shires, and the representatives of the principal cities. But whom are we to understand by *antiquiores regni*? The Saxon word *ealdormen*, of which these Latin words appear to be a translation, signified the senior or superior magistrates in any community. Sir H. Spelman, in his Glossary, explains it thus: "Multipli-
 " *citer autem occurrit apud Anglo Saxones, utpote pro*
seniore vel superiore in quavis præsectura." Of which he gives many proofs. It may then be thought, that, by the *antiquiores regni* here mentioned, some such are denoted; and that, as they are named after barons, they probably were not of high rank. But other testimonies shew, that they have a particular reference to those old men, of different orders and degrees, who were ordered to recollect, and set down in writing, the ancient customs of the realm. For, in the account that is given of this council by Gervase of Canterbury we find these words:
 " *Crastino autem, cum in unum convenissent, et de heb-*
 " *ternæ diei serie pauca retulissent, sciens rex quod qui*
 " *major ætate major est et iniquitate, Ite, ait, ætate et sa-*
 " *pientia provectiores, et avi mei consuetudines disquiri-*
 " *te, ut in scriptum redactæ deducantur in medium,*" &c.
 The bishop of London also says, in a letter to Becket concerning this transaction that the ancient customs of the kingdom were set forth and put into writing. *antiquorum memoria*. And in another epistle, from all the clergy of the province of Canterbury to the pope, we find these words: " *Adjuratis itaque per fidem, et per eam quæ*
 " *in Deum spes est, majoribus natu episcopis, aliisque reg-*
 " *ni majoribus, retroacti temporis insinuatæ statu, digni-*
 " *tates requisitæ palam prolatae sunt, et summorum in reg-*
 " *no virorum testimoniis propalatae.*" It is not improbable, that some old magistrates, well acquainted with the ancient customs in judicial proceedings, were summoned to parliament with a particular view to this enquiry, namely the *seniores in quavis præsectura*: and very possibly the oldest magistrates in towns and boroughs may have been their representatives in the times of Henry the Second. I would here observe, that if the omission of naming representatives of counties, cities, or boroughs, in the descriptions of this council, be taken

See it in
 Appendix
 to the next
 book. Epist.
 126. e Cod.
 Cottoniano.
 V. Epist.
 128.
 Lib. i. e Cod.
 Vatican.

as a proof that none were in it, that proof will hold as strong to shew, that no tenants *in capite* of the king inferior to barons were present therein: but, that all who held of the king *in capite* had a right to be present in *generali concilio*, which this is said to have been, has before been proved from old Records. Among these tenants there were many, who, in King Henry the First's charter, are distinguished from barons. "Siquis baronum meorum, comitum, vel aliorum qui de me tenent, mortuus fuerit," &c. And again, in another clause, "Siquis baronum vel aliorum hominum meorum filium suum nuptum tradere voluerit," &c. And a contemporary author says, that to the parliament of Northampton, where Becket was arraigned, all the tenants in chief were summoned. "In castro Northamptoniæ solemne statuens (rex) celebra- re concilium, omnes qui de rege tenebant in capite man- dari fecit." Whereas many other writers, in describing that parliament, mention only prelates, earls, and barons. Indeed the historians of this and the following century seldom take notice of any but the greater nobility in parliamentary councils. And from this silence a negative argument has been drawn against the existence of any others in such assemblies. But this proof is overturned by positive testimonies from other contemporary historians, and sometimes from themselves.

See the note on the Record of the 15th of King John, cited by Brady.

V. Stephan. in vitâ S. T. Selden's Titles of Honour, part ii, p. 733. See also Rot. Claus. 19 H. III. dorfo. & Brady's answer to Petit, p. 69.

Thus Matthew Paris, in the description he gives of a parliament, which he terms *a most general one*, in the thirtieth year of King Henry the Third, mentions none of the laity, but earls and barons, and none of the clergy, but bishops, abbots, and priors. "Medio vero Quadragesimæ, edito regio convocata, convenit ad parliamentum generalissimum totius regni Anglicani totalis nobilitas Londini, videlicet, prælatorum, tam abbatum et priorum, quam episcoporum; comitum quoque et baronum, ut de statu regni, &c. contrerarent." A stronger passage can scarce be found in any writer, to countenance the opinion, that so late, as in the thirtieth year of King Henry the Third, our *most general parliaments* consisted only of the nobility of the kingdom, and that by the nobility none were meant but prelates, earls, and barons. Yet this very author will himself furnish an evident proof, that in this same parliament, not only all the tenants in chief, but the whole clergy and people were present, and participated in the acts done therein. For he tells us, that when

V. M. Paris, sub ann. 1246.

P. 469.

the king had laid before his parliament several articles, "super gravaminibus et oppressiōibus ecclesiæ et regni sui, &c. Hæc attendentes universi ac singuli unanimiter consenserunt, ut adhuc, ob reverentiam sedis apostolicæ, D. Papæ humiliter ac devote, tam per epistolas, quam per solemnes nuncios, supplicarent, ut tam intolerabilia gravamina et jugum subtraheret importabile. Scripserunt igitur D. Papæ in hæc verba." He then recites the letters they wrote to the pope, of which the first is from the bishops of the province of Canterbury; the second from all the abbots and priors of England in the name of themselves and their convents; and the third runs in these words: Sanctissimo, &c. "Devoti filii sui, comes Cornubiæ Richardus, Simon de Montforti, comes Legrecestræ, de Boun comes Herefordiæ et Essexiæ, R. le Bigod, comes Nortfolkiæ, R. comes Gloverniæ et Herefordiæ, R. comes Wintoniæ, W. comes Albermarliæ, H. comes Oxoniensis, et alii totius regni Angliæ barones, proceres, et magnates, ac nobiles portuum maris habitatores, nec non et clerus et populus universus, salutem," &c. Here *the inhabitants of the Cinque Ports* (of whom no mention was made in the description above given) are added to the barons *and other nobles and chief men of the kingdom*, as concurring in this epistle; and over and above all these, *the whole clergy and people*. Many other instances may be given, how little stress ought to be laid, for the determining of this question, on the silence of writers about the commons, in the short and inaccurate accounts of great councils or parliaments, which we commonly meet with, during this period of our History; but I will only produce one more, from the Annals of Burton, which speaking of a parliament held in the thirty ninth year of Henry the Third describe it thus: "Post festum S. Michaelis autem tenuit rex parlamentum suum apud Westmonasterium, convocatis ibidem episcopis, abbatibus, et prioribus, comitibus et baronibus, et totius regni majoribus."

V. Ann. Bur-
ton, sub ann.
1255. p. 355.
Hist. of Con-
vocat. p. 345.

"From whence (says Dr. Hody) one would at first sight conclude that the *inferior clergy* were not present. But from hence it appears, that we ought not to rely on such kind of enumerations." For immediately it follows, "In quo pretebat à clero de laicis feudis suis sibi suffragium exhiberi, &c. disponens, de suo consilio in quo, hoc prius à clero, et postmodum à populo majore

" et

“ *et minori extorquere. Episcopi vero, abbates, priores,
 “ et procuratores qui ibidem pro universitate affuerunt,
 “ nolentes hujusmodi exactioni adquietere,” &c.*

If these proctors, who were there for the whole body of the clergy, had not been thus expressly named in the following paragraphs, together with the *populus minor*, or commons, the foregoing description might have been brought to confirm Dr. Brady's assertion, that none but tenants in chief were to be found in our parliaments before the forty ninth of Henry the Third: whereas now we are assured by the testimony of these annals, that even this mode of representation had taken place before that time. Indeed the learned Dr. Wake, in his book against Atterbury, on the State of the Church and Clergy of England (p. 202.) supposes, that the proctors here mentioned were not present in parliament but only in a legatine council held at the same time. This is setting aside the authority of those Annals, because they disagree with his Hypothesis. But how could the writer of them, *who lived himself at that time*, have made such a mistake, if no proctors for the clergy had ever come to parliament before the twenty third year of Edward the First?

Having thus shewn the insufficiency of the argument drawn by many eminent writers, against the presence of the commons in our ancient legislature, from the general silence of historians who lived in those times, I shall proceed to lay before the reader such descriptions of parliaments in the reign of Henry the Second, as seem to contain a degree of positive evidence which may give light to this question. Gilbert Foliot, bishop of London, in the letter to Becket before-mentioned, where he is speaking of the parliament convened at Northampton, for the trial of that prelate and other business of the kingdom, says, “ *Convenit populus ut vir unus:*” It would be a great force on the natural meaning of the word, to construe *populus* here as comprehending only the nobility and tenants in chief of the crown. At the same time it is evident that *the whole body of people* (which is the proper and obvious sense of the term) could not have assembled in that town or castle, otherwise than by some mode of representation. Such indeed of the inferior clergy, or lay-freeholders, as resided in or near Northampton, might be personally there, *confuse et permixtim*; but they whose abode was far distant, and large communities of men, could

v. Append.
 to the next
 book, Epist.
 126.

could only come thither by *procurators*, or *representatives*. And in this way the expression, *convenit populus ut vir unus*, is intelligible and just. The bishop of London, after having mentioned this great attendance at Northampton, in consequence of the king's summons, goes on in these words: "*Et assidentibus sibi, quorum id dignitati congruebat et ordini, quod dictum est super exspecto mandato suo, in querelam adversus vos, usus quâ decuit it modestiâ et venustate, proposuit.*" A distinction is here made between the different ranks and orders of men comprehended before under the general word *populus*. It is said, that those, *to whose dignity and rank it belonged*, sitting near to the king, he modestly laid before them his complaint against Becket: which implies that others were present, who were not of a rank and dignity to be seated in this assembly. Of the course of the proceedings I shall say more in another part of this work. It will be sufficient

V. Brompt.
Chron. sub
ann. 1165.

V. Steph-
nid. in vitâ
S. Thomæ.

here to observe, that the business of this assembly, which Brompton expressly calls *parliamentum*, and which certainly was more than the ordinary *curia regis*, appears not to have been confined to the trial of Becket: for a contemporary author informs us, that a scutage was settled in it, for raising foot soldiers to be employed against the Welsh. And it is probable, that other matters were also considered in it, as the meeting was so general; though the historians, being monks, are so taken up with the affair of Becket, that they have omitted to mention them. In the author last-cited we find these words: "*Consultibus episcopis, comitibus, et baronibus Angliæ omnibus, Normanniæ pluribus.*" I presume that these *Norman barons*, who are mentioned hear as *consulting* with those of England in this parliament, had lands and honours in the kingdom: for the writer takes no notice of it as an irregularity. Roger de Hoveden, in his account of the transactions in this council relating to Becket, has these words: "*Et cum venisset ad aulam regis descendit et ipse, crucem suam bajulans, et intravit domum regis. Deinde intravit exteriorem cameram solus, portans crucem suam. Nullus enim suorum sequebatur eum. Et cum intrasset, invenit plebem multam in eâ, seditque inter illos: rex autem erat in secretiori thalamo cum suis familiaribus.*" This is exactly agreeable to Eadmer's account of the parliament at Rockingham castle, where the king was in *secreto regio cum principibus*, and the multi-

tudo

tudo populi was in the body of the church belonging to the castle. Hoveden afterwards calls this outward room *curia*. And in the passage above-cited he says the archbishops sat down among the commons, *invenit plebem multam in ea, seditque inter illos*: which he surely would not have done, if they had been a mere *mob*. Another author of that age (Alanus in *Quadrilogo*) says, that the king expected him in this outward chamber, where Roger de Hoveden tells us the *multa plebs* was assembled, but, that, upon his coming in armed with the cross, the king retired into an inner room. "Intraturus cameram regis, ubi eum rex "præstolabatur, ad ostium ipsam à crucis bajulo crucem "accepit, et palam, cunctis videntibus, ipse eam bajula- "vit, &c. Aduiens autem rex archiepiscopum armatum "venire, &c. citius recessit in conclave interius." It is of no importance to the point I am considering now, which of these authors is right in this particular: but from both accounts it appears, that the chamber, in which Hoveden says the *plebs* was assembled, was the great chamber of the parliament. And the words of Gervase of Canterbury are much the same with those above-cited.

In the year 1188, a great council, or parliament, was held by Henry the Second at Gaintington near Northampton, in which a very heavy tax was laid upon the whole nation for the Crusade against Saladin. Hoveden says, "Rex magnum convocavit concilium episcoporum, abbatum, comitum, et baronum, et aliorum multorum, tam clericorum quam laicorum." From these words compared with, and explained by other passages, which I have cited before, we may suppose that this parliament, *the last of Henry the Second*, had in it all the inferior orders of freemen, both clergy and laity; that is, some of each order.

The reader may enquire, in what manner the opinion of the people was taken, when they were assembled in the confused and irregular multitudes before described. Of this I find no account that is absolutely certain; but a very probable conjecture may be drawn from a passage in the Continuation of the History of Florence of Worcester by another ancient writer. Describing a synod held at Westminster, in the year eleven hundred and twenty five, he says, "that all the prelates were there *cum innumera clerici et populi multitudine*." He then recites the several canons, or decrees which they made, and concludes them all

See Parlia-
mentary
History, p.
301.

all with this form of words thrice repeated, "*Placet vobis? Placet?*" which undoubtedly was the manner of asking and giving votes made use of in that synod; from which we may reasonably infer, that the same was used in our parliaments, the resemblance between those and synods being then very great. So late, as in the twenty eighth year of King Edward the Third, we find, that the commons were told by the lord chamberlain, in the presence of the lords, that there were great hopes of bringing about a peace between England and France, by means of certain commissioners appointed, on both parts, for that purpose; but yet the king would not conclude any thing without the consent of his lords and commons, wherefore he demanded of them, in the king's name, whether they would assent and agree to a peace, if it might be had by treaty? to which the commons answered with one accord, that what should be agreeable to the king and his council in making of this treaty would be so to them: but being asked again, whether they consented to a perpetual peace, if it might be had, they unanimously cried out, *Ouy, ouy, Ay, ay*. Mr. Tyrrel observes upon this, that parliamentary proceedings were not then reduced to that form and regularity which they have been brought to since that time; the commons here giving their opinion *viva voce*, and in the presence of the lords, to what the king demanded.

P. 302. *But the assembly of the nobles was convened with more ease, and appears to have acted not only as a council of state, and supreme court of judicature, but, as being authorised, by permission and common consent, to exercise some degree of parliamentary power, the limitations of which were not accurately defined.*

V. Spelman's
Gloss.
MAGNUM
CONCILIUM.

The words of Sir H. Spelman on this subject are remarkable: "*Magnum concilium plerunque intelligitur de summo illo concilio totius regni (quod parlamentum vocant) e tribus ordinibus constitutum. Sub hoc autem nomine continetur alias aristocraticum illud, quod ad ardua etiam regni negotia cogeant aliquando reges veteres consimili brevi quo et ipsum parlamentum, sed prætermissa plebe, et minori solennitate. In magno enim concilio quod tenuit Edwardus III, anno regni sui 15. circa festum translationis Thomæ Martyris (quod erat 7 die Julii), nec 40 dierum ratio in ejusdem summonitione*"

“ tione habebatur, nec *baronum omnium* convocatio: sed
 “ cum in parlamento Westmonasterii immediate jam tum
 “ præcedente, 54 enumerati essent (præter episcopos) se-
 “ culares proceres, hic Londini evocabantur 22 tantum-
 “ modo. De magno concilio fit sæpe mentio in annalibus
 “ nostris; sed *de quo prædictorum genere intelligendum*
 “ fuerit sæpe etiam dubitatur. Archiva consule.

The uncertainty how to distinguish these different councils in the account of ancient authors, which Sir H. Spelman here mentions, has occasioned much of the perplexity and variety of opinions among learned men about the share that the commons had in the parliaments of this kingdom before the forty ninth of Henry III. For a long time we can have no assistance from our archives, to which he refers us; nor, when they can be consulted, do they always afford so clear a light as might be desired.

P. 303. *The same magnificence in feasting was continued by his successor, but dropped by Henry the First.*

The words of Malmshury, from whence I take this L. iii. f. 62.
 account, are as follow: “ *Convivia* in præcipuis festivita-
 “ tibus *sumptuosa et magnifica* inibat. Natale Domini apud
 “ Glocestriam, Pascha apud Wintoniam, Pentecof-
 “ ten apud Westmonasterium agens quotannis quibus in
 “ Angliâ morari liceret. Omnes eo cujuscunque profes-
 “ sionis magnates regium edictum accersebat, ut extera-
 “ rum gentium legati speciem multitudinis, apparatusque
 “ deliciarum mirarentur. Nec ullo tempore comior
 “ aut indulgendi facilius erat, ut qui advenerant largita-
 “ tem ejus cum divitiis conquare ubique gentium jac-
 “ titarent. *Quem morem convivandi primus successor ob-*
 “ *stinatè tenuit, secundus omisit.*”

By the last paragraph I do not understand that Henry the First laid aside the usual meetings of the nobility for the dispatch of publick business at Christmas, Easter, and Whitsuntide; but only that he omitted the custom of feasting with them in the liberal manner that had been practised by his father and brother, or, at most, that he did not constantly summon those assemblies as they had done.

P. 305. *although, in the twenty first year of Richard the Second, the commons had shewn, in a petition to the king, how that before those times many judgments and ordinan-*
ces,

NOTES TO THE SECOND BOOK OF

ces, made in the times of the progenitors of our lord the king in parliament, had been repealed and disannulled, because the state of the clergy were not present in parliament at the making of the judgments and ordinances.

In this petition the *judgments* may be understood to refer more particularly to the prelates, who had absented themselves from trials in the house of lords; but in the making of *ordinances* the clergy of the lower house were concerned, as well as those of the upper. Accordingly it appears, that, in consequence of this petition, a proctor was appointed to act for *them*, as well as for the prelates. And Bishop Burnet takes notice, that, in the second act of the same parliament (viz. in the twenty first of Richard II.) it is said, " That it was first prayed by the commons, and that the lords spiritual, and the proctors of the clergy, did assent to it; upon which the king, by the assent of all the lords and commons, did enact it." He adds, " That the twelfth act of that parliament was a repeal of the whole parliament, that was held in the eleventh year of that reign, and concerning it, it is expressed, that the lords spiritual and temporal, the proctors of the clergy, and the commons, being severally examined, did all agree to it. From hence it appears, that these proctors were not only a part of the parliament, but were a distinct body of men, that did severally from all the rest deliver their opinions."

P. 306. *The presence of the people in the Saxon¹ councils, and their having had a share in the highest acts of legislature and government, even till the entrance of the Normans, seems to be proved very strongly, from the preambles of laws and other proceedings of those councils; and from the words of the best historians, who lived near to those times.*

The Preface to Ina's Laws is thus translated by Wilkins, " Ego Ina occiduorum Saxonum rex, cum consilio et cum doctrinâ Cenredæ patris mei, et Heddæ episcopi mei, et Erkenwoldæ episcopi mei, et cum omnibus meis senatoribus, et senioribus sapientibus populi mei, et multa etiam societate ministrorum Dei, consultabam de salute animæ nostræ, et de fundamento regni nostri, ut justæ leges et justæ statuta per ditionem nostram stabilita et constituta essent," &c.

By these words it appears, that the Saxon legislature was

was composed of the king, *cum omnibus suis senatoribus*, which senators I take to have been the nobility of the kingdom, such as afterwards formed the ordinary council of lords under our kings of Norman race; et *cum senioribus sapientibus populi sui*, by whom I understand the deputies or representatives of the people, either by election or magistracy; et *cum multa etiam societate ministrorum Dei*, which words evidently denote the inferior clergy, mentioned by Eadmer as present in the parliaments of his times.

In the year 855, Ethelwolph, king of the West-Saxons, gave to the church the tythe of his kingdom, V. Spelman's Councils, sub ana. 855.
 “ *cum consilio episcoporum et principum*, præsentibus et
 “ *subscriptentibus archiepiscopis et episcopis Angliæ uni-*
 “ *versis, nec non et Beorredo R. Merciæ, et Edmundo*
 “ *Estanglorum R. abbatum et abbatissarum, ducum, com-*
 “ *mitum, procerumque totius terræ, aliorumque fidelium*
 “ *infinita multitudine, qui omnes regium chirographum*
 “ *laudaverunt, dignitates vero subscripserunt.*” By this last paragraph it appears, that the act or decree of the council was approved by all present, though subscribed by none but the nobility, or dignified persons. The Saxon constitution therefore required, not only the presence, but the approbation, of the people, to the enacting of a law: yet to mark the distinction between these, and the higher orders of the state, the nobility alone set their hands to the act. The *proceres totius terræ* here mentioned will take in all the *Thanes*, and perhaps the *seniores sapientes regni*. By the words, *aliorumque fidelium infinita multitudine*, I understand an unlimited number of freeholders, the same as the *populi numerositas, et assistentem monachorum, clericorum, laicorum numerosam multitudinem*, mentioned by Eadmer, and the *Vulgus* spoken of by the author of the Acts of King Stephen. The late Sir John Fortescue Aland, one of the justices of the King's Bench, who was very learned in the Saxon language and legal antiquities, says, in his Preface to the Book of Chancellor Fortescue on the difference between an absolute and limited monarchy, “ *that whoever care-*
 “ *fully and skilfully reads the Saxon laws, and the pre-*
 “ *faces or preambles to them, will find, that the commons*
 “ *of England always in the Saxon times made part of*
 “ *that august assembly.*”

There

V. H. Hunt.
Hist. lib. iv.
f. 196.

There is a remarkable passage in Henry of Huntington, concerning the deposition of Sigebert, king of the West-Saxons. "Sigebertus rex, in principio secundi anni regni sui, cum incorrigibilis superbiz et nequitiz esset, congregati sunt proceres et *populus totius regni, et provida deliberatione, et unanimi consensu omnium, expulsus est a regno*. Kinewelf vero, juvenis egregius, de regia stirpe oriundus, *electus est in regem*." Here we see that the Saxon people concurred with the nobility, both in deposing and electing a king, and that it was not done in a tumultuous manner, but *provida deliberatione et unanimi consensu*, words which express a parliamentary deliberation and consent. Henry of Huntington wrote early in the reign of Henry the Second, when the memory of the Saxon customs could not be worn out in England, and certainly took this part of his history from some more ancient chronicle. The words are also transcribed by Roger de Hoveden, in his Annals, without any correction.

Sir H. Spelman says, "it seemeth by those synods that were holden in the times of the Saxon kings, and by some after the conquest, that *great numbers of the common people flocked thither*." For it is said in ann. 1021, "*cum quamplurimis gregariis militibus, ac cum populi multitudine copiosa*." And ann. 1126, *innu-meraque cleri et populi multitudine*:" and so likewise in ann. 1138, and other *synods and councils*. By what order or limitation this *innumera populi multitudo* came to these assemblies appeareth not." (See Spelm. of Parliaments, p. 64.)

Lib. iii. f. 56.

William of Malmesbury, in a passage I have cited before, relates an answer sent by Harold to the duke of Normandy's charge of his having broken the oath, by which he had promised to aid that prince in his pretensions to England. The words are these: "De regno addebat *præsumptuosum fuisse, quod absque generali senatus et populi conventu et edicto alienam illi hæreditatem jura- verit*." This is a plain declaration, that, by the Saxon constitution established in England, *the people*, as well as the nobles, had a right to be called to *the general assembly*, upon affairs of great moment, and to join in the *edicts* made there; so that, without *their consent*, the succession to the crown could not be disposed of. It is observable, that the historian uses the word *senatus* in the

the same sense as we find it in the before-cited preamble to the laws of King Ina, for the ordinary assembly of the nobles, which he distinguishes from *the people*, but supposes that the latter ought to be joined to the former, in order to compose the entire legislature and great council of the nation, upon extraordinary occasions. This was agreeable to the custom ascribed by Tacitus to the Germans, from whom they sprung: "*De minoribus rebus principes consultant, de majoribus omnes; ita tamen, ut ea quoque, quorum apud plebem arbitrium est, apud principes pertrahantur.*" And I think it apparent, that the same form of government continued in England, during the reigns of all the kings treated of in this work; some clear traces of it remaining till much later times. But, as the feudal system was more favourable to the aristocratical than to the popular power, the *lesser senate* by degrees usurped much of the authority that belonged to the greater; and even in the general assemblies the nobles were so predominant, as to leave the people little power, till the relaxation of that system, the increase of wealth among the commons, and other changes in the political state of the kingdom, which it would take up too much time to enumerate here, gave more regularity and a better balance to the whole legislature.

We are told by the Book of Ely, that, in Edward V. Histor. Eliens. lib. ii. c. xi. the Confessor's reign, the brother of an abbot, though nobly born, could not be reckoned among the nobility of the kingdom, because he had not an estate of forty hides of lands. Gale's Hist. Brit. Script. Vol. i. p. 513. "*Quoniam ille quadraginta bidarum dominium minime obtineret, inter proceres tunc numerari non potuit.*" and therefore he was refused by a lady, whom he sought in marriage, till his estate was increased to that magnitude by grants of land from his brother. This passage is remarkable, because it shews that a certain portoin, and that a very large one, of landed property *in dominio* was a necessary qualification, under the Anglo-Saxon government, to admit any person to the rank and degree of nobility. Whether this continued under the Normans I find no proof; but it must be observed, that no argument can be justly drawn from hence, that, to be qualified for a place in the Saxon great council, or *witenagemot*, it was requisite to be lord of forty hides of land, Nothing like it is said here, nor does such a notion

a notion agree with any accounts that are given us of that assembly in the writings or records of those times. But if the *lesser senate* was composed of none but the *proceres*, as there is reason to believe, this passage will be a proof, that, without such an estate or lordship, no person could sit *there*.

P. 307. *For, the property of the commons was so unequal to that of the nobles, and the feudal obligations of the inferior landholders to the lords they held under created such a dependence of the former on the latter, that, although in the idea and scheme of the government, a popular power was mixed with the regal and aristocratical, ye', in reality, the scale of the people was not weighty enough to make a proper counterpoise to either of the other.*

All this must be very evident to any person who reads the history of this kingdom, or looks into its laws. But another reason may be added to account for what appears in many rolls of parliament, long after the period contained in this work, that the commons declined to give their opinion or advice to the crown, in certain matters of state, and submitted their judgment thereupon to the king and his council, or to them and the lords. While the representatives of cities, towns, and boroughs, were chosen only out of persons residing therein, they were, for the most part, people of low degree and condition, whose education and way of life rendered them very unfit to judge of arduous questions concerning foreign affairs, and treaties with foreign states. Accordingly we find, that, in the seventh of King Richard the Second, the commons being much pressed to give their opinions on a treaty of peace with France, *before the conclusion thereof, declared, they knew not what to say; because in the articles were contained many terms of the civil law which they understood not*; and, in the seventeenth of the same king, they pleaded want of capacity to give their judgment or advice on the articles of a peace, in which were contained the law-terms of *homage lige, souveraineté, et ressort*, for which they referred themselves to what the lords, knights, and judges had before agreed upon. Here we see that the *knights of shires* were not supposed to be under the same incapacity as the rest of the commons. It was therefore an alteration very beneficial to the importance

portance of the commons in parliament, when gentlemen of liberal education were admitted to serve for cities, towns, and boroughs. The revival of learning in the sixteenth century, and diffusion of it among the gentry, during the next hundred years, contributed also to fill the house of commons with able and knowing men, who had no need to have recourse to the other house of parliament, or to the king's council, for the explaining of terms of law, or the articles of a treaty with any foreign power. But it will be proper to observe, that even in the earliest times, so far back as we have any rolls of the parliament, all the commons appear to have given their advice with great freedom in matters concerning the internal government and order of the kingdom. What they declined to advise in, upon some occasions, were questions that related to the making of peace or war, as, for instance, in the twenty first and twenty eighth years of King Edward the Third, and sixth, seventh, and seventeenth of Richard the Second. See the Rolls of those years. In one of these, namely, the seventh of Richard the Second, they were told by the chancellor, "that he was to shew them certain articles, *wherein, although the king himself might well conclude, yet, for good will, he would not, without their knowledge and consent.*" To this they answered, not imprudently, *that it seemed not them to intermeddle with their counsel therein, and referred it to the king and council.* Certainly there was a great difference between exercising the proper parliamentary power of judging of the articles of a peace concluded, and of calling the ministers to account if they had advised the king ill in the exercise of his prerogative, or authorising them to conclude particular articles by a *previous advice*. But in all these instances it is remarkable, how great a regard was shewn by these kings to their parliaments, even in points which belonged to the royal prerogative! Such a conduct in such a prince as Edward the Third, crowned with victory and with glory above all other monarchs, is an evident indication, that *to govern by parliaments* has been the policy of this kingdom under the wisest and best kings, from the earliest times.

A late author has cited Sir Robert Cotton's Abridgement of the Records in the Tower, to shew that the commons, in those times, *were much below the rank of legislators.* He says, "the king told the commons, that they were only petitioners, that is, *they had not any*"

VOL. IV.

K

"proper

See Hume's
Hist. of Eng-
land, p. 91.
vol. ii. note.

“*proper legislative authority.*” But I will give the whole passage as it stands in the book itself, that the reader may judge on what authority this construction is founded. The words are these: “The duke of York, and earl of Northumberland, and others of the blood of the archbishop of Canterbury, pray the king, that the same archbishop might have his recovery against Roger Walden, for sundry wastes and spoils done by the said Roger, in the archbishoprick aforesaid, whereto the king granted, and thanked them for their motion. The commons on the 30th of November pray, *that forasmuch as they were not made privy to the judgement aforesaid, no record be made to charge or to make them parties thereunto*; whereunto the archbishop of Canterbury, by the king’s commandment, answered, that the commons were *only petitioners*, and that all judgements appertain to the king and to the lords: unless it were in statutes, grants, subsidies, and such like, the which the king would from that time to be observed,” It is evident, that the *legislative power of the commons*, instead of being denied, is expressly confirmed by this answer. They are truly told, that the power of *judicature* appertains not to them, but to the king and the lords; and this was the question to which their prayer related: but in *statutes* they were to judge, as well as in grants, subsidies, &c. Certainly their being *petitioners* was no argument of their not being *legislators*: since the course of proceedings then was, that their *petitions* if assented to by the lords and the king, should be turned into *statutes*, as all the old records of parliament unquestionably shew.

Ibid. *The execution of all laws was entrusted to the king, and none could be made, repealed, or altered, without his assent.*

This has been always the royal prerogative in this kingdom: but *the dispensing with laws* began no earlier than the reign of Henry the Third, by an insertion of the clause of *non obstante* into grants and patents, after the example of the papal power. Matthew Paris calls this *detestabilis adjectio*, and what the king’s judges at that time thought of it appears from this passage in the same contemporary historian, “*Quod cum comperisset quidam vir discretus, tunc justiciarius, Rogerus de Thurkeby, ab alto ducens suspiria de prædictæ adjectionis appositione,*

"sitio, Heu, heu, hos ut quid dies expectavimus? Ecce
 "jam civilis curia exemplo ecclesiasticæ coinquinatur, et
 "à sulphureo fonte intoxicatur." The parliament like-
 wise complained, *that the church and kingdom suffered*
infinitely by reason of the clause of non obstante, which
weakened and enervated all oaths, ancient customs, writ-
ten laws, grants, statutes, and privileges. When King
 Richard the Second said (as he is charged to have done
 in one of the articles exhibited against him in parlia-
 ment), *that his laws were in his mouth, or in his breast;*
and that he himself alone could make and change the laws
of his kingdom, he totally departed from all the notions
 of the ancient constitution, and by acting upon such
 principles, infused into him by *foreigners,* he dissolved
 the bonds of allegiance, and *deposed himself.*

V. Parliam.
 Hist. vol. i.
 p. 46.

During the violence of the civil wars between the
 two houses of York and Lancaster, and the frequent re-
 volutions that happened in the government, the whole
 frame of the constitution was shaken and injured: but
 how strongly the fundamental notions of liberty were
 still prevalent in the breasts of honest and knowing men,
 appears from the admirable treatise of Fortescue on ab-
 solute and limited monarchy. He, who had been raised
 to the highest offices of the law under Henry the Sixth,
 was not afraid to affirm under Edward the Fourth, with
 the same freedom as in another part of his writings he
 had spoken to his royal pupil, the son of Henry the
 Sixth, that "*rex datur propter regnum, et non regnum*

propter regem. Wherefore all that he doth ought to
be referred to his kingdom. For though his estate be
the biggest estate temporal upon earth, yet it is an of-
fice in the which he ministreth in his realm defence and
justice. And therefore he may say of himself, as the
pope saith of himself and of the church, in that he
writeth servus servorum Dei." This author also
 founds the original of our government on a number of
 people *incorporating and uniting themselves into a realm*
under one head, or king; says, "*they ordained the same*
realm to be ruled by such laws as they would all af-
sent to ;" which he affirms to be the only *political*
government; and absolute monarchy to be mere tyranny. Such
 were the notions of our ancestors, in the reign of Edward
 the Fourth. Nor does Bracton, or Glanville, speak a
 different language: But, on the other hand, they had

See Forte-
 scue on abso-
 lute and li-
 mited mo-
 narchy, c.
 viii.

C ii.

no idea of degrading our kings into mere *doges of Venice*, divested of royal power. And some of our over-zealous whigs would do well to consider, that, by thus lowering the monarchical part of our government, they would as much destroy the symmetry and strength of the whole, as those who seek to raise it higher than the just proportions of a mixed and limited monarchy will admit. Even allowing, what I think can never be allowed, that a republic in itself is a better form of government for a great and opulent country, than a mixed and limited monarchy, it does not follow from thence (as these gentlemen seem to believe), that by bringing the latter nearer to the former they shall make the latter more perfect. For the perfection of it consists in the equal poise of the three constituent parts. Whether that poise be destroyed by throwing too much weight on the side of the king, or of the nobility, or of the people, the mischief is the same.

P. 309. *The wealth of the crown, in the times of which I write, was a great support of its power.*

L. iv. p. 523.
apud Du-
chêne.

Ordericus Vitalis, a contemporary historian, says, that out of the settled revenues of England one thousand and sixty pounds of sterling money, thirty shillings, and three farthings, were reported to be paid every day to William the First, besides the gifts, fines, or amercements, and many other articles, which continually increased the royal treasure. "*Ipsi vero regi (ut fertur) mille et sexaginta libræ sterlingis monetæ, solidique triginta, et tres oboli ex justis redditibus Angliæ per singulos dies redduntur, exceptis muneribus regiis, et reatum redemptionibus, aliisque multiplicibus negociis quæ regis ærarium quotidie adaugent.*" It is observable that the historian does not give us this account upon his own knowledge, but upon report (*ut fertur*). Yet one would suppose, that his information was very particular, as he mentions even the farthings. And the way in which he counts, viz. one thousand and sixty pounds, and thirty shillings, instead of one thousand and sixty one pounds, ten shillings, is still used in the Exchequer. Yet the sum is so great as justly to occasion a doubt: for, the pounds here mentioned being pounds *in weight*, which contained in them as much silver as three of our present pounds sterling; and the shillings not being coins of that denomination,

nation, but signifying the twentieth part of a pound weight of silver, which makes one of them equivalent to three of our shillings; this receipt amounts to three thousand, one hundred and eighty four pounds, ten shillings of our money, not reckoning the farthings. Multiply this by 365, the produce will be 1,073,985 of annual income; which being also multiplied by five (the lowest computation of the value of silver in those days beyond the present) the sum produced by it will be 5,369,925, exclusive of all the casual profits of the crown, which in those days were very high.

Though William Rufus was very lavish in his gifts and expences, it does not appear that he alienated any part of the ancient inheritance of the crown. For no resumption was made of his grants by his successor, nor any complaint of the crown's being deprived of its patrimony: but, on the contrary, that prince's opulence is noted by all the contemporary historians. A modern historian ^{Daniel, p. 44.} affirms indeed, that William Rufus, about the latter end of his reign, *resumed his own grants*; but no proof of this is found in the contemporary writers. William of Malmshury says, that when he had spent all the treasures of his father, he made up his losses by rapines. *Itaque quum defecisset quod daret, inops et* ^{L. iv. p. 69. de W.} *exhaustus, ad rapinas convertit animum.* Upon the whole there appears no good reason to believe, that the estate of the crown was much diminished before the reign of king Stephen, all whose grants, excepting those he had made to the church, were resumed by Henry the ^{V. M. Paris} Second. It appears from a letter to the pope from the ^{Hist. Anglæ, p. 666, sect. 30.} English parliament, in the reign of Henry the Third, that the clear revenue of the kingdom was then below ^{sub ann.} sixty thousand marks *per ann.* The words are these: ^{1245. 1 edit.} "Italici percipientes in Angliâ sexaginta millia marcarum, et eo amplius annuatim (aliis perceptionibus diversis exceptis) plus emolumenti meri redditus de regno reportant quam ipse rex, qui est tutor ecclesiæ et regni gubernacula moderatur." The historian says in another place, "Et inventa est summa reddituum eorum annuatim sexaginta millia marcarum; ad quam summam non attingit redditus annuus totius regni Angliæ." But in both these places is meant not the king's private patrimony, or landed estate, but the publick revenue of the kingdom, which is often distinguished from the other in ^{V. Cotton. Librar. Julius, B. xiii.} our ancient records.

In a manuscript treatise of Giraldus Cambrensis, *De institutione*

stitutione regis, it is said, that the annual *fiscal* revenues amounted, in the time of Edward the Confessor, to just the same sum. “*Angliæ regum Anglorum tempore, et penultimi Edwardi Westmonasteriensis diebus, annui fiscales redditus, sicut Rotulo Wintoniensi reperiuntur, ad sexaginta millia marcarum summam implebant.*”

L. ii. c. 5.

By the annual *fiscal* revenues I understand the ancient inheritance of the crown: for Bracton says, “*Est res quasi sacra res fiscalis, quæ dari non potest, nec vendi, nec ad alium transferri à principe vel a rege regnante.*” But little regard is due to this evidence of Giraldus: for immediately afterwards he says, that in Henry the Second’s time, by the continual grants made to soldiers, both from that prince and from Stephen, and by the wars between them, and afterwards with France, these *fiscal* revenues were brought down to *twelve thousand marks*: but he forgets that all the grants made by Stephen, or Matilda, except those to the clergy, were resumed by Henry the Second at the beginning of his reign; and no other author has said, that this prince, for the maintenance of his wars against France, ever alienated any part of the patrimony of the crown.

Ibid. It is therefore evident, that a vast share of the lands of England was possessed by Henry the Second, which was a constant support to the royal dignity, independent of all taxes or impositions on his subjects, and which was considered as a sacred and inalienable patrimony, transmitted to him from his ancestors, the ancient kings of England; &c.

In one of the articles exhibited in parliament against King Richard the Second it is said, “that whereas the king of England by the revenue of his kingdom and the patrimony belonging to his crown, is able to live honourably (*bonnetement*) without the oppression of his people, as long as the kingdom is not burdened with the charge of wars; yet the said king, in a manner for his whole time, during the truces between the kingdom of England and its adversaries, hath not only given away a great, yea indeed the greatest part of his said patrimony, and this to unworthy persons, but also hath further imposed on his subjects so many burdens of monies granted, as it were every year of his reign, that thereby he hath extremely, and too excessively oppressed his people, to the impoverishment of his kingdom, not converting the
“*sums*”

“ *sums so levied to the advantage and profit of the realm of England, but prodigally squandering it away for the ostentation of his name, and in vain-glory, whilst great sums of money are owing in his kingdom for the victuals of his household, and other things bought, though he hath abounded with riches and treasures more than any of his progenitors.*”

In this remarkable article is very clearly set forth the whole policy of our ancestors, with regard to the different provisions they made for the crown. Its support in time of peace was the *patrimony belonging to it and the revenue of the kingdom*. But in war they supposed it necessary, that the extraordinary charges should be supplied by *grants from parliament*. The burthening the people with such grants, or other impositions, in time of peace, the misapplying them to vain-glory, while the charges of the household were unpaid, and the giving away the *ancient patrimony*, intended for the maintenance of those charges and of the honour and dignity of the crown, are considered by them as offences against the duty of a king.

There is also a passage in the treatise of Lord Fortescue Chief Justice Fortescue. on absolute and limited monarchy, which is very pertinent to this subject. For the greater ease of the reader, I shall give it modern English and spelling. “ The king, our sovereign Lord, had, at times, since he reigned over us, provision in lordships, lands, tenements, and rents, near to the value of the fifth part of his realm, exclusive of the possessions of the church; by which provision, if it had constantly abided in his hands, he had been more mighty in good revenues than either of the said two kings (viz. the sultan of Egypt and the king of France) or any king that now reigns in Christendom. But this was not possible: for to some part thereof the heirs of them that sometime owned it are restored; some by reason of entails; some by reason of other titles, which the king has considered, and thought them good and reasonable. And some part of the same provision his good grace has given to such as have served him so signally, that, as their renown will be eternal, so it befitted the king’s magnificence to make their rewards everlasting to their heirs; for his honour and their perpetual memory. And also the king has given part of the said provision to his most honourable brethren, who not only have served him in

"manner aforesaid, but are so near in blood to his highness, that it befitted not his magnificence to have done otherwise."

From hence it appears that in the reign of Edward the Fourth, when this treatise was written, the wealth arising to the crown from its landed estate and casual profits, exclusive of subsidies and grants by parliament, was sometimes equal to one fifth of the lay property of the kingdom. But that many of these profits were only temporary, and could not, from the nature of them, be retained by the king. On this I would observe, that, in some periods of the reign of Edward the Fourth, the estate of the crown must have been greatly encreased by the forfeitures of the Lancastrian nobles, and by the escheats that must have fallen into the hands of the king upon the extinction of heirs male in many noble families of his own party, during the bloody civil wars, with which the realm was then infested. Of the forfeitures a great part, before the writing of this treatise, had been granted away by the king to those of his own adherents who had done him good service. And we see that Fortescue thought such grants not illegal nor improper. But of that great lawyer's opinion and advice on the subject of the royal revenue I shall have occasion to say more on a subsequent note. I will only add here, that in another chapter he says, *"it was undoubted that the king had a sufficient provision for his ordinary charges."*

C. viii.

P. 310, *These inquisitions, or verdicts, were first methodised in the country, and afterwards sent up to the king's Exchequer.*

In the archives of the church of Exeter are contained the returns for the counties of Wilts, Dorset, Somerset, Devon, and Cornwall, compiled from the original verdicts given in by the juries to the commissioners appointed for the making of that survey. I have been favoured with the sight of some very curious observations made on these manuscripts, and on the lesser and greater Domesday-books, by the learned and ingenious Dr. Milles, dean of Exeter, which, when published, will give more light and instruction on this subject, than the world has yet received from any other writer.

The Book of Ely, from which I have taken the account of the manner in which the inquisitions were made, consists of two parts, the first containing the possessions of the

the church of Ely extracted from the original verdicts, which verdicts for fifteen out of the seventeen hundreds of Cambridgeshire are contained in the second part.

P. 313, 314. *The greater escheats were let at farm, or committed to the custody of persons appointed by the king, to whom they accounted for the profits.*

Mr. Madox says, of these escheats, "that, after they had been long vested in the crown, they were hardly ^{Hist. of} to be distinguished from the king's ancient demesne." ^{the Exceq.} But in this there seems to be some inaccuracy. For it ^{c. x.} must always have been easy to distinguish escheated baronies, and estates held by knight-service, from the king's ancient demesne; because all tenants in that demesne held by socage. And Mr. Madox himself says, in another part of his works, that a manor, ^{V. Baroni-} *which was part of the* ^{am, l. i. c.} *ancient and original inheritance of the crown,* could not be ^{p. 11.} called an honour, because it never was a barony, or in the seisin of an earl or baron. This must therefore have prevented any confusion in the accounts of *the ancient demesne lands, and of any honours or baronies escheated to the crown.* But it was necessary to distinguish between honours or baronies held originally of the crown, and those devolved to it by escheat; because, in the latter case, the tenants, who before had held of the baron, became the tenants of the king, *non sicut de corona*, but in the same manner as they had answered for their services to the baron. Which distinction may have been lost when they had been long escheated, and retained by the king, before the escheatry was formed, but, I think, not afterwards.

P. 217. *And therefore when writers say, that the lands of the crown were inalienable, it must be understood only of those in ancient demesne, not of these incidental or casual possessions.*

This difference is well attended to and expressed by the commons in their petition to King Henry the Fourth for a ^{V. Rot.} resumption of grants in the sixth year of his reign. ^{Parl. 6} "Forasmuch as the crown of the realm of England has ^{Hen. IV.} suffered great disparagement and diminution (*est grante-* ^{n. 14.} *ment emblemissée et aneantissée*) by great and excessive grants made to diverse persons, as well spiritual as temporal, of lands, tenements, fee-farms, franchises, liberties,

“ liberties, and other possessions, be it enacted in this
 “ present parliament for the profit of the king and of the
 “ realm, and for the support of the commons, that all
 “ castles, manors, lordships, lands, tenements, fees, and
 “ advowsons, fee-farms, annuities, franchises, liberties,
 “ and customs, *which were members and parcels of the an-*
 “ *cient inheritance of the crown* in the fortieth year of the
 “ reign of King Edward grandfather of our Lord the pre-
 “ sent king and from that time, whether given for life,
 “ or for a term of years in fee simple or in fee tail, or con-
 “ ditionally, or to the spiritual lords for themselves and
 “ their successors; *except wardships, marriages, and*
 “ *escheats*, and what has been assigned to the queen in
 “ dower, should be entirely resumed, recovered and
 “ seised into the hands of our Lord the king, *and rejoin-*
 “ *ed to the crown, to remain perpetually annexed to it,*
 “ *without being ever for the future, by any means or de-*
 “ *vise whatsoever, separated from it, saving the grants*
 “ *made at, or after, the term before-mentioned, of any*
 “ *parcels of the said ancient inheritance of the crown,*
 “ *by special charter confirmed by the authority of parlia-*
 “ *ment.*”

Here the distinction between the ancient inheritance of the crown, and escheats or casual profits, is evidently marked out: and as for the confirmation given to grants *out of the ancient inheritance* made in or before the fortieth of Edward the Third, it was necessary for the avoiding of the inconvenience and injustice that must always attend *the looking back too far* in acts of resumption. Nevertheless the desire of giving ease to the people induced the parliament to advise, that during the continuance of heavy wars, or at times when the crown was greatly oppressed with debts, all such casual profits might remain in the hands of the king, for his own use and benefit. Thus, in the fifth year of Edward the Second, an ordinance was made, that, *to pay the debts of the king, and raise up his state, and maintain it more honourably*, no grant of land, or rent, or franchise, or *escheat, or of wardship, or marriage, or of bailiwick*, should be made, &c. *till his state should be raised up, &c.* And thus, in the first year of Richard the Second, the commons prayed for an enquiry into the grants of castles, towns, lands, tenements, bailiwicks, *wardships, marriages, escheats, and reliefs*, made by Edward the Third, to see whether they had been worthily

V. Rot.
Ord. 5 Edw.
II. n. 3.

V. Rot.
Parl. 1 R.
II. n. 48.

they had been pro-
ut where the king
ed, and not gran-
hers, *till his debts* V. Rot.
for the princes his Parl. 5 R.
commons again II. p. 1.
n. 74.
ade of any land,
to any person
f debt, and out of
ut time.

he would make no
ls and others of his
the next year, that V. Rot.
liefs, escheats, for- Parl. 6 R.
kept for the king's II. n. 42.
in support and aid of
to bestowed. To which
than that he was willing
ter by the advice of the
seem to him most conducive

V. Rot.
Parl. 9 R.
II. n. 42.

in his ninth year he consent-
ment, that all his revenues
year without any diminution
And in his eleventh year the
forfeitures lately incurred of
and all escheats and other profits,
and fall, into the hands of the king,
might remain in them during
his debts, and in aid of the mainte-
also for the ease and relief of the poor
which he granted with some restric-
in the eleventh of King Henry the
commons prayed, that no grant be made of
or other profits of the crown, except
wicks, till all the debts then due from the
should be entirely discharged, and with-
ing in the hands of the king and his royal suc-
the reasonable support and maintenance of his
chamber, and wardrobe: which the king af-
with some relaxations.

V. Rot.
Parl. 11
Hen. IV.
n. 23.

ould be tedious more instances of the same
but I will when any feignory had been
of parliament, the parlia-
ing thereunto as being
ancient inheritance of the
crown ;

crown; and, no doubt, with good reason. It must also be noted, that on the ancient demaines of the crown were built many royal castles and fortresses held by knight-service or castle-guard, which when alienated by our kings, were very properly and justly resumed; as we find to have been done, with the advice and consent of parliament, by Henry the Second. But, if *all escheats, forfeitures, and other casual profits*, had been likewise deemed inalienable, the crown, perpetually receiving, and rendering nothing back, would soon have drawn to itself, by means of these incidents, all the lands and wealth of the kingdom. Nevertheless, in the treatise of Lord Chief Justice Fortescue, cited before in these notes, King Edward the Fourth is advised, that, in order to answer extraordinary and sudden charges, for which he could not have the ready assistance of his parliament, a perpetual provision should be made, by a general resumption of all the lands he had granted away (except those given to his brothers, and some others who had signally served him); which resumption should be authorised by act of parliament, and at the same time a great subsidy should be granted to the king for the rewarding in money those grantees, who, by the opinion of a council, to be established for that purpose, should be found to have deserved it. All the lands thus redeemed he proposed to annex for ever to the crown, so as not to be alienated without consent of parliament: to support which advice he gives many weighty arguments, such as the mischiefs that must ensue to a realm from the poverty of a king, which he most judiciously sets forth; and the evils that would follow his relieving his necessity by impoverishing and oppressing the commons. He likewise displays very wisely the great peril to the state, if any nobleman has more to spend than the king; for which reason he intimates, that the king, in disposing of his noble wards in marriage, should prudently take care, that too great additions might not be made to their wealth; and that he should encrease his own by the casualties of escheats and forfeitures, and also by purchasing land from such of his nobles as were desirous to sell, which none could do without his licence. On all this I would observe, that every good purpose proposed by this able lawyer and wise statesman is much better answered by our present method of providing for the maintenance of the honour and dignity of the crown, in settling on the king, for his life, a clear annuity, of such value,

See Fortescue on Absolute and limited monarchy:

Ibid. c. xi.
p. 84. c.
xiv. c. xix.

C. v.

C. iii. iv.
x.

C. x. p.
76, 77.

as may be sufficient for all charges both ordinary and extraordinary, except those which, from the nature of them, ought, in good policy, to be reserved for the consideration of parliament. Thus no danger to the state can be likely to arise from *the poverty of the king*, nor, on the other side, from the balance of power being hurt by too great a weight of *landed property* in the scale of the crown, a danger to which it does not seem that our ancestors were sufficiently attentive. And the alterations of our law with regard to the power of alienating lands, with other changes that have happened in the state of our nobility since Fortescue wrote, have taken away that apprehension he so justly conceived of any subjects being made, by the greatness of their estates, as powerful as their sovereign. The danger now appears to lie the other way, namely, that the poverty of some of our nobles may, at certain times, make them too dependent on the king; which, while baronies were territorial, could not possibly happen; as there was always, under that constitution of the peerage, a sufficient estate annexed to every honour, for the maintenance of the baron, according to his rank, without his having recourse to the bounty of the crown.

P. 318. *But the highest payments of this nature which I meet with in the rolls, till after the thirty first year of Henry the Third, were made to that king, by John earl of Lincoln, and by Simon de Montfort; the former of these having given three thousand marks, to have the marriage of Richard de Clare, for the benefit of Matilda, his eldest daughter, and the latter ten thousand to have the custody of the lands and heir of Gilbert de Unfraville until the heir's full age, with the heir's marriage, and with advowsons of churches, knights-fees, and other pertinencies and escheats.*

One still greater payment, being the double of the highest above-mentioned, had escaped my observation in another part of Mr Madox's History of the Exchequer, p. 322. He shews from the great roll of the second of Henry the Third, that Geoffry de Mandeville gave twenty thousand marks, that he might have to wife Isabel countess of Gloucester, with all her lands and knights-fees, a most enormous sum, considering the value of silver in those days!

P. 223. *I find no account of what was taken by Henry the Second for another feudal due, viz. on the making his eldest son a knight.*

See part i.
cap. v. sect.
37.

Mr. Selden takes notice, in his Book on Titles of Honour, that with respect to our kings this aid continued arbitrary till the statute of the twenty fifth of Edward III, which put the king in the like condition with ordinary lords, who, by a former statute of the third of Edw. I, had been restrained from taking more on this account than twenty shillings from every tenant of a whole knights-fee, and the same from every one who held lands in socage of the yearly value of twenty pounds, and so *pro rata*; but that none of it should be levied until the son were of the age of fifteen years, which is called, by Breton, *l'age pur ordre de chevalier prendre*.

P. 325. *And both these laws seem to refer to a preceding statute, now lost, by which the feudal policy of the Normans had been established in England.*

The words of reference, in one of these statutes, namely, the fifty fifth, are as follow: *Prout statutum est eis, et illis a nobis datum et concessum jure hæreditario in perpetuum per commune consilium totius regni nostri prædicti;* and in the other (the fifty eighth), “*sicut illis statuimus per commune consilium totius regni nostri prædicti, et illis dedimus et concessimus in feodo jure hæreditario.*” Sir H. Spelman, speaking of the latter of these laws, says, “here the word *statuimus* sheweth, that it was the Conqueror’s institution, and *concessimus in feodo jure hæreditario* implyeth, that feuds were not hereditary before *this grant*.” By *this grant*, I presume he does not mean *this statute*, but the grant referred to therein. I cannot agree with the learned author of the *Introduction to the Law of Tenures*, in thinking that both these laws refer to the fifty second of that king, which runs in these words: “*Statuimus etiam ut omnes liberi homines fœdere et sacramento affirment, quod intra et extra univèrsum regnum Angliæ (quod olim vocabatur regnum Britanniae) Willielmo regi domino suo fideles esse volunt, terras et honores illius omni fidelitate ubique servare cum eo, et contra inimicos et alienigenas defendere.*” On this law I have before made some observations, p. 192. book ii. vol. ii.—The purport of it seems to be, the imposing of an oath of confederacy, or association, for the defence of
“ the

See
Wright’s
Tenures,
p. 65 to 74.

the king, and of all his territories and dignities both in and out of Great Britain. But it does not appear to *give* any thing; nor is there the least mention in it of the great alteration made in the tenures of lands and the policy of the realm by this king and his parliament, in rendering the English *hereditary fiefs, to all perpetuity*, which is expressly taken notice of in the two other statutes, and called a *grant or concession*. The words of it are likewise very different from those of the usual oath of fealty. I am therefore obliged to differ with the learned writer above-mentioned in his opinion, that this law introduced into England the Norman feudal tenures, and is referred to in the fifty fifth and fifty eighth laws before-recited; nor can I agree with him, that the *liberi homines* mentioned in those laws were no others but the tenants in chief of the king.

Ibid. Whether this difference arose from any other statute made by William the First, after the two above-mentioned, or from a narrow and unfavourable construction thereof, by a subsequent usage, I cannot say.

There is much obscurity in this matter: but by the *Inquisitio Gbeldi*, which is found among the Exeter manuscripts mentioned in a former note on Domesday-book, and no where else in the kingdom (being an account of the money levied for danegelt, in the five western counties at the time when the survey was made by William the Conqueror) it appears, that among the demesne lands exempted from that tax were the lands of all the *servientes regis*, under which description are contained, not only those who held of him by knights-service, but *præpositi, camerarii, boſtiarii, mareſcalli, coci, focarii, carpentarii, venatores, parcarii*.

In four of the western counties the exempted demesne amounted to one third, and in the fifth, viz. Somersetshire, to one fourth of the whole land.

P. 326. *However this may have been, it is declared, most explicitly, by King Edward the First, in his confirmation of the charters, that the aids, free gifts, and other impositions, irregularly taken or levied by him or his ministers, before that time, for his wars or other necessities should not be drawn into precedent because they might be found recorded on the rolls: and he therein grants to the nobility and commonalty of the realm, that, for the future*

NOTES TO THE SECOND BOOK OF

future, be would not, for any necessity whatsoever, take any such aids or impositions, without the common assent of the whole kingdom, and to the common benefit thereof; with a reserve of the ancient aids and impositions due by custom.

See Cotton's Abridgement of the Records in the Tower, p. 152. 51
Edw. III.

Nothing can be more express than this declaration. Nevertheless, in the fifty first of Edward the Third, upon the parliament's renewing their claim to the king, *that in the time to come the prelates, earls, barons, commons, citizens, and burghesses of his realm of England may not henceforth be charged, molested, nor grieved to make any common aid, or sustain any charge, unless it be by common assent of the prelates, dukes, lords, and barons, and other people of the commons of his realm of England, and that in full parliament*; his answer was, "that he is not at all willing to do it, *without great necessity, and for the defence of the realm, and where he may do it with reason.*" These sayings, the last especially, set the whole loose. On this I would observe, that although it was dangerous to allow any latitude of this nature in the raising of money without consent of parliament, yet there was also a danger, which might attend the restraint in cases of real and urgent necessity, or even where advantages of importance might be lost by waiting till the time when the parliament should be sitting, and the supply could be granted there in the usual form. This seems to have been one cause of the too frequent violations of this great and acknowledged right of parliament, as well as a specious pretence for them on many occasions; especially under the Tudors, and the two first kings of the Stewart family: but the difficulty has been obviated by the expedient resorted to in later times of making provision for such contingencies by *votes of credit* in time of war, and even, on some occasions, in time of peace, when there appears to be cause for apprehending danger, or much inconvenience to the publick, from tying the government up by the usual restrictions. But great care ought to be taken, that this trust, which the parliament reposes in the government, should be *limited as to the sum*, and given under the obligation of being *subject to account*. Nor ought such votes to be ever passed *in time of peace*, without a most apparent reason, upon some clear prospect of great benefit from enabling the government to make subsidiary treaties with foreign powers during the recess of parliament, or other such weighty motives. Under these cau-
tions,

tions, the use of *votes of credit and confidence* is a means of delivering that great security of our property and freedom, the ancient claim of our parliaments *that no aids or taxes shall be levied without their assent*, from those objections of inconvenience and danger to the state, which many writers on the side of absolute monarchy have formerly brought against it with some shew of reason.

See Barclay
and others.

I cannot better end this note on this very important subject, than by transcribing some passages from that excellent treatise of Lord Chief Justice Fortescue on Absolute and limited monarchy, which, next to the laws recited in the Bill of Rights, is one of the noblest monuments we have of the liberties enjoyed by our ancestors. In his third chapter he says, that “on account of the
“ great wars which the English made in France the three
“ estates durst not assemble. And then, for that cause,
“ and for great necessity which the French king had of
“ goods for the defence of his kingdom, he took upon him
“ to set *tailles* and other impositions upon the commons,
“ *without the assent of the three estates*; but yet he
“ would not set any such charges, nor has set, upon the
“ nobles, for fear of rebellion. And because the com-
“ mons, though they grudged, have not rebelled, or be-
“ hardy to rebel, the French kings have yearly since set
“ such charge upon them, and so augmented the same
“ charges, *that the said commons be so impoverished and*
“ *destroyed as they can scarce live*. They drink water,
“ they eat apples, with bread very brown made of rye.
“ They eat no flesh, but very rarely, a little bacon, or of
“ the entrails or heads of beasts slain for the nobles and
“ merchants of the land. They wear no woollen, but a
“ poor coat under the outermost garment made of broad
“ canvass, and call it a frock. Their hose are of like can-
“ vass, and reach not above their knee; wherefore they
“ be gartered, and their thighs bare. They can live no
“ otherwise: for some of them, that were wont to pay
“ to their lords for their tenements, which they take by
“ the year, a crown of gold, pay now to the king, over
“ and above that crown, five crowns. From whence,
“ they are prest by necessity so to watch, labour, and
“ grub in the ground for their sustenance, that their
“ nature is much wasted, and the kind of them brought
“ to nought. They go crooked, and are feeble, not
“ able to fight nor to defend the realm; nor have they
Vol. IV. L “ money

" money to buy them weapons withall: but verily *they*
 " *live in the most extreme poverty and misery*; and yet
 " they dwell in one of the most fertile realms of the
 " world: through which it happens that the French
 " king has not men of his own realm able to defend it,
 " except his nobles, who endure no such impositions,
 " and have therefore strong bodies. By which cause the
 " said king is compelled to make his armies and retainers
 " for the defence of his land, *of strangers*, as Scots,
 " Spaniards, Arragonefe, Germans, and other nations;
 " or else all his enemies might over-run him. For he
 " hath no defence of his own, except his castles and
 " fortresses. *Lo! this is the fruit of his Jus regale.*
 " If the realm of England, which is an island, and there-
 " fore may not easily get succours of other lands, were
 " ruled under such a law, and under such a prince, it
 " would be then a prey to all other nations, that would
 " conquer, rob, and devour it."

It will not be necessary to enter here into any disqui-
 tion, whether the time *when*, and the manner *how*, the
 kings of France obtained an absolute monarchy, called
 here *Jus regale*, with a power of taxing their people
without the assent of the three estates, be rightly fixed by
 this writer. It is sufficient to observe, that, as he had
 lived many years in France, where he took refuge with
 the son of King Henry the Sixth, his pupil, we cannot
 doubt the truth of the description he gives of the po-
 verty and misery of the people there from such arbitrary
 impositions. And with relation to the peasants and til-
 lers of the soil much of it still continues. He thus pro-
 ceeds in his comparison of the kingdoms of England and
 France, " But, blessed be God, *this land is ruled under*
 " *a better law, and therefore the people thereof be not in*
 " *such penury, nor thereby hurt in their persons*; but
 " *they be wealthy and have all things necessary to the sus-*
 " *tenance of nature. Wherefore they be mighty, and able*
 " *to resist the adversaries of the realm, and to beat other*
 " *realms that do, or would do, them wrong. Lo! this*
 " *is the fruit of Jus politicum et regale, under which*
 " *we live.* Somewhat now I have shewn you of the
 " fruits of both laws, *ut ex fructibus eorum cognoscatis*
 " *eos.*" Let me now ask, is not this a most remarkable
 testimony of the freedom of the English government,
 and the easy state of the commonalty, under our ancient
 constitution, even after the great disturbance which the
 utmost

utmost rage of civil war had occasioned in the kingdom ? Will it be said, against an evidence so clear and express that, till within the last century, the charters granted by our kings were of no real value or benefit to the people ? Our liberty has certainly been confirmed, improved, and strengthened, and a better form has been given to it, during that period and part of the preceding century ; but it stands on the old foundations ; and a great portion of its vigour is drawn from that root, which made it flourish in the times that Fortescue here describes ; a root fixed in the English soil, and carefully cultivated, many ages before. I will go on to recite some other remarkable passages from this admirable work, which I wish were read and got by heart by every young English gentleman, before he travels into France. The author says, in his 4th chapter, “ Seeing that our king reigneth over us by
 “ laws more favourable and good to us, than be the
 “ laws by which the French king ruleth his people, it is
 “ reason we be to him more good and more profitable
 “ than be the subjects of the French king unto him,
 “ which it would seem that we be not, *considering that*
 “ *his subjects yield to him more in one year, than we*
 “ *do to our sovereign Lord in two years,* although they
 “ do it against their wills.”

I have observed in another place that this defect of revenue has been since supplied to the crown by the settlement of a proper and ample *civil list* on our kings, for the maintenance of the honour and dignity of the crown ; and by annual grants for publick service so bountifully given, according to the exigences of government, that no absolute monarchy was ever supplied by its subjects in proportion to their numbers, with an equal liberality.

The same author goes on thus : “ Nevertheless, when
 “ it is considered, that a king’s office consists in two
 “ things, one to defend his realm against its enemies
 “ without, another, to defend his people against wrong-
 “ doers within, which the French doth not ; *since he*
 “ *oppresseth them more himself than would have done all*
 “ *the wrong-doers of the realm, though they had had no*
 “ *king :*

“ And since it is a sin to give no meat, drink, cloathing, or other alms to them that have need, as shall be declared in the day of doom, *how much a greater sin is it,*
 “ *to take from the poor man his meat, his drink, his*
 “ *cloathing, and all that he hath need of ? Which verily*

“ *doth the French king to many thousands of his subjects;*
 “ *as it is openly before declared. Which thing, though*
 “ *it be coloured per jus regale, yet it is tyranny: where-*
 “ *fore, albeit that the French king's revenues be, by*
 “ *such means, much greater, than be the revenues which*
 “ *the king our sovereign Lord hath of us, yet they be*
 “ *not righteously taken, and the might of his realm is*
 “ *near destroyed thereby. By which consideration I*
 “ *would not that the king's revenues of this realm were*
 “ *made great by any such means.*

And in his tenth chapter he mentions the impositions
 taken by the duke of Burgundy upon every ox, every
 sheep, and upon other things sold, and also upon every vessel
 of wine, every barrel of beer, and other victuals sold in his
 dominions; “ *which (says he) is no little revenue to him*
 “ *yearly; but yet he doth it maugre the people; which*
 “ *God forbid that the king our sovereign Lord should do*
 “ *upon his people, without their grants and assents. Ne-*
 “ *vertheless, with their assents such manner of subsidy,*
 “ *if there could not be found a better means of increas-*
 “ *ing the king's revenue, were not unreasonable. For*
 “ *therein, and in the gabel of salt, every man shall bear*
 “ *an equal charge. But yet I would not that such a*
 “ *new custom and charge were put upon the people, in*
 “ *our sovereign Lord's days, with which his progenitors*
 “ *charged them never, if a better and more convenient way*
 “ *could be found.”*

I need not observe that such taxes have in some degree
 been since laid. But the chief inference I would draw
 from these citations is this. If the learned judge who
 wrote thus, concerning the laws and constitution of Eng-
 land, under King Edward the Fourth, could have revived
 in the reign of Charles the First, what opinion would
 he have given upon the arbitrary impositions laid by that
 prince on his people *without their grants or assents*?
 Would he have said, *it was the ancient prerogative of*
the crown to raise money in that manner? Would he
 have thought it agreeable to policy or to law? Would
 he have told that unhappy prince, as some of his bishops
 told him, *that it was the duty of his people to submit to*
such impositions without resistance; that his *jus regale*
 was inherent in him *jure divino*, and uncontrollable by
 any human power? Or would he have satisfied his con-
 science, as Dr. Brady and others tried to satisfy the con-
 sciences

sciences of his sons Charles and James, by persuading him that the privileges, on which the commons insisted, had been extorted from King John by rebellious barons, and did not extend to the commons, who in those days *were all slaves?*

Lastly I ask, are we to take our ideas of the rights and liberties of our ancestors from the connected series of their laws, and from the writings of their greatest and most approved lawyers, especially such as treat of government and the constitution of England, or from irregular acts of power, and inconsiderate or corrupt proceedings in parliaments or courts of justice, under particular reigns, and at particular times?

P. 331. *The religious notions of the times, and laws founded thereupon, forbidding usury to all Christians; and not distinguishing between that and a reasonable interest for money upon loans; without which neither commerce could well be carried on, nor the sudden exigences of the government, or of particular persons, be supplied, the Jews were necessary as money-lenders; &c.*

The Jews understand, that by the law of Moses they are forbidden to lend money *to one another* upon interest: but may practise usury to any height in their dealings with foreigners, without offence against *that law*.

P. 340. *Yet there were some of stone, and of a handsome architecture, according to the taste of those days, &c.*

The abbot of Peterborough mentions a *stone house* (*domum lapideam*) of a rich citizen in London. It can therefore hardly be doubted that the houses of the nobility, built in that city or its suburbs, which Fitzstephen speaks of as magnificent, were likewise of stone.

y Bened.
abbat. v. i.
p. 197. feb
ann. 1177.

P. 344. *We have a charter of King Henry the Third in the English of that time, which, as it is curious to see how near the language approached to that of the present century, I have given, with a translation of it into modern English, in the Appendix to this book, &c.*

Mr. Camden tells us, that in the time of King Henry the Second he finds this *rime* sent from Rome by Pope Adrian, an Englishman, to be taught to the people:

See Cam-
den's Re-
mains con-
cerning Bri-
tain p. 24.

Ure fadyr in heaven rich
Thy name be halyed ever lich:
Thou bring us thy michell blisse
Als his in heaven y doe
Ever in Yearth been it also.

That holy bread that lasteth ay
 Thou send it ous this ilke day.
 Forgive ous all that we have don,
 As we forgivet uch other mon :
 Ne let ous fall into no founding
 Ac shield us fro the fowle thing.

Amen.

But this learned author does not say on what authority he supposes, that these verses were as ancient as the time of pope Adrian. They seem to me much more modern, and nearer to the present English than the charter of Henry the Third, which I have given as a specimen of the language in his time.

P. 345. *Indeed those who in that age were best qualified to be authors all wrote in Latin.*

V. J. Le-
 landi Cornus
 de scr. Bri-
 tan. c. 217.

Among these are some poets, of whom by far the most eminent was Joseph of Exeter, called Josephus Iſcanus. In his youth, he wrote only some epigrams and love-verses, none of which are preserv'd : but in his riper age, his genius took much higher flights, above the pitch of any contemporary poets. For he wrote two epic poems in Latin heroic verse; the first on the subject of the Trojan war, in five books, which he dedicated to Thomas Baldwin archbishop of Canterbury, and of which Le-land and Camden have given us some specimens, that seem indeed much more elegant, and nearer the spirit of true Latin poetry, than any other compositions of our countrymen in those times. I will transcribe a few lines, to give my reader a taste of his style and manner. He says to the archbishop his patrón, who was going to the holy war,

“ Te sacræ assument acies, divinaque bella.

“ Tunc dignum majore tuba, tunc pectore toto

“ Nitar, et immensum mecum spargere per orbem.

And afterwards,

“ Altera sacræ

“ Tendo fila lyræ; pleetro majore canenda

“ Antiochæ me bella vocant: nunc dicere votum est

“ Christicolæ acies, et nostræ signa Sibyllæ.

“ Quæ virtus, quæ dona crucis: nec fundit anhelæ

“ Hos mihi Cyrrha pedes; animi fidentis hiatum

“ Celsior e.cælo venit impleturus Apollo.

“ Tu quoque, magne pater, nostri fiducia cœpti

“ Altera, et in pelago pandens mihi vela secundo,

“ Hoc

- “Hoc tibi ludit opus : succedit serior ætas,
 “Seria succedunt aures meritura pudicas;
 “Si tuus in nostros candor consenserit ausus,
 “Non metuam culicis stimulos, fucique susurrum.

The promise he makes in these verses of another poem on the subject of the crusade, he fulfilled, and published that poem after the death of Baldwin, but in what year is uncertain. Leland only saw a fragment of it, in which

V. Leland.
 ut supra c.
 197. de T.
 Balduino.

the writer takes occasion to praise his native city Exeter,
 “*tam exquisitè (says Leland) ut facile credas Musas ip-*
 “*sas, cum profluenti Helicone toto, vati ea concinenti præ-*
 “*sensissimas adfuisse.*” It must however be observed,

that this author is too apt to be lavish of his praise; and writes always much more as a panegyrist than a critic. Joseph of Exeter lived to a very old age, and made a new edition of his poem *de bello Trojano* in the reign of Henry the Third. The matter of it is taken, not from Homer, but Dares Phrygius, whose fabulous history was much in vogue at that time. From thence Mr. Camden has cited the following verses, to shew the talent of this writer for poetical description :

See Cam-
 den's Re-
 maines, p.
 313.

- “Haud procul incumbens intercurrentibus arvis
 “Idæus confurgit apex, vetus incola montis
 “Sylva viret, vernat abies procera, cupressus
 “Flebilis, interpres laurus, vaga pinus, oliva
 “Concilians, cornus venatrix, fraxinus audax;
 “Stat comitis patiens ulmus, nunquamque Jensecens
 “Cantatrix buxus : paulo proclivius arvom
 “Ebria vitis habet, non dedignata latere
 “Canticolam poscit Phœbum, vicinus atistas
 “Prægnantes fecundat ager, non plura Falernus
 “Vina bibit, non tot pacit Campania messes.”

But in an edition I have seen of this poem printed at Basil, with Homer's Iliad and Odyssey, the first line runs thus :

- “Haud procul incumbens urbi, mediantibus arvis,
 “Idæus confurgit apex, &c.”

To these specimens I will add the description of Ajax Telamon fighting against the Trojans.

- “Parte furens aliâ cognatos impiger hostes
 “Turbabat Telamone satius, septena coruscans
 “Terga boum : hasta viro quercus jaculabilis uni
 “Unam passa manum : non ferrea suta superbum
 “Velaverit latus ; sive has bellare proterva

- “ Non tulit ira moras, seu lato pectoris orbe
 “ Se totum latuisse ratus, sic sœvit inermis
 “ Sic premit armatos: maturat fata cadentum
 “ Terror, et ignavis mors est videre fœrentem.”

Though the Latin in these and other parts of this work is not quite pure and grammatical, yet it is more so than in most other verses of that age; and in the spirit of poetry and harmony of numbers it far excells the *Philippiad* of Guillaume de Breton, a contemporary epic poem.

See Camden's Re-
 mains.

In a much lower strain, but with great vivacity and facetious good humour, did the jovial bard, Walter de Maup, archdeacon of Oxford, who may be called the *Anacreon* of the eleventh century, sing his *Leonine rimes* in praise of good drinking; a specimen of which I will here transcribe:

- “ Mihi est propositum in tabernâ mori:
 “ Vinum sit appositum morientis ori:
 “ Ut dicant, cum venerint, angelorum chori,
 “ Deus sit propitius huic potatori.
 “ Poculis accenditur animi lucerna,
 “ Cor imbutum nectare volat ad superna,
 “ Mihi sapit dulcius vinum in tabernâ,
 “ Quam quod aquâ miscuit præfatus pascua.
 “ Squam cuique proprium dat natura rudens;
 “ Ego nunquam potui scribere jejuni:
 “ Me jejunum vincere posset puer unius:
 “ Sitim et jejunium odi tanquam venus.
 “ Tales versus facio quale vinum bibe:
 “ Non possum scribere nisi sumpto cibo:
 “ Nihil valet penitus quod jejunus scriba.
 “ Nilonem post calices carmine præbeo.
 “ Mihi nunquam spiritus prophetiæ datur,
 “ Nisi cum fuerit venter bene satur:
 “ Cum in arcæ cœcæbri Bacchus dominatur,
 “ In me Phœbus irruit, ac miranda satur.”

P. 348. But though much was stolen by this author, he added enough of his own, to give him a considerable rank, in the opinion of Sir H. Saville and Mr. Selden, among the many historians who flourished in the eleventh and twelfth centuries.

Of these historians, besides those mentioned in the text, Gervase of Canterbury and Diceto are frequently referred to in the course of this work. They are large in their account of church affairs, and not useless to a compiler

of the history of those times in their accounts of other matters. Brompton's chronicle is in many places a transcript from Gervase and Giraldus Cambrensis; but he has added copies of some records and ancient laws, which are not to be found in these authors, and make his work of some value.

P. 350. *Some of his letters are animated with a spirit of liberty, which would have done honour to a Greek or Roman republican: &c.*

It may be worth while to give the reader a specimen of this spirit from one of his letters to the bishop of Worcester, who was son to the great earl of Gloucester, often mentioned in this work. His words are these: "*Fidium alloquor illustris comitis, qui in regum catalogo dignus fuerat numerari, nisi quia magnificæ virtutis titula meruit, ut, in libertatis culmine constitutus, reges viderit in ordine secundo.*" The sense of which may be thus expressed in an English translation: "I speak to the son of that illustrious Earl, who would have been worthy to be reckoned in the catalogue of kings, if his virtue and magnanimity had not raised him so high, that, being placed at the head of a free people, and their leader in defending the cause of liberty, he saw kings a rank below his own." V. epist. S. T. C. e cod. Vatican. lib. ii. epist. 96.

P. 358. *He says, the houses, on such occasions, were strewed with flowers, and the jovial company drank wine out of gilded horns, &c.*

Agreeably to this description we are also told by Fittsham, that Becket, when he was chancellor, ordered his hall to be strewed every day in the winter with fresh straw or hay, and in summer with rushes or green leaves fresh gathered, that the multitude of knights, which the benches could not contain, might sit on the floor, thus rendered clean and gay, without dirtying their fine garments. "*Iusserat quaque die novo stramine vel sceno in hieme, novis scirpis vel frondibus virentibus in æstate, sterni hospitium suum; ut militum multitudinem, quam scamna capere non poterant, area munda et læta reciperet; ne vestes eorum pretiosæ, vel pulchræ eorum camisiæ, ex aræ forde maculam contraherent.*" It may be worth remarking, that still at the coronation of the kings, Westminster-hall is strewed with herbs,

But

But even in Becker's days this rustic simplicity was mixed with great magnificence in gold and silver plate; for the author above cited goes on to say, that, "*vasis aureis et argenteis domus ejus renidebat.*" I will add, that I have seen, in the treasury of St. Bertin's church at St. Omers, a silver vessel of that age, the form and workmanship of which are as elegant as any now made.

P. 361. But it appears, that, in the times of Henry the Second, the whole gentry of England, having adopted the fashions of the Normans, were as magnificent in their dress as their fortunes could bear.

See Camden's Remains, p. 194.

Mr Camden says, that in this age the use of silk made by silk-worms was brought out of Greece into Sicily, and then into other parts of Christendom. He likewise mentions a costly stuff, called in Latin *aurifrisum*, which was worn in England at this time. With regard to the mode of dress the same learned antiquary observes, that king Henry the Second brought in the short mantle, and was therefore surnamed *Court-mantel*. Yet by other proofs it appears, that long flowing gowns after the fashion of the East, continued to be worn by the nobility and gentry in his time.

NOTES

NOTES

TO THE

THIRD BOOK

OF THE

Life of King Henry the Second.

PAGE 372. *For this purpose the archbishop had before employed John of Salisbury, to compile a book, chiefly drawn from the writings of Eadmer, a monk contemporary with Anselm, in which, with an account of the merit of that prelate to Rome and the church, several miracles, said to have been done by him during his life, and after his death, were recorded.*

It is said, in the above-mentioned book, that a hare ^{V. Johan. Sarib. de vita Anselm. in Anglia Sacra, p. 165. Ibid. p. 156.} pursued by a pack of dogs having run under the feet of Anselm's horse for protection, he, in compassion to the poor little beast, bid her go off securely, and by the authority of his word alone restrained the hounds. We are also told in another place, that being to dine with a monk, who had nothing for his dinner but bread and cheese, he bid him cast his net into a neighbouring river, and assured him he should take a fish big enough to feed the whole company; the monk did so, and a fish of a wonderful magnitude was instantly caught, to the great astonishment of all present. There are other stories, if possible, still more ridiculous; but these are sufficient to instruct us what regard is due to that legend, and what absurdities the credulity of those times could swallow. At the same time it must be noted, that the author of this book was one of the most sagacious and learned men of that age: but neither

ther he, nor his patron Becket, nor Pope Alexander himself, was ashamed of any lies, which it was thought would be serviceable to the interest of the church, and do honour to its champions in the opinion of the people.

P. 374. *It would be tedious to enumerate each particular instance, wherein, by a real or pretended zeal for the church, he (Becket) disquieted his fellow-subjects, or offended his sovereign, &c.*

W. Edward
Grim or
Ryme, M.A.
Gresham
College.

Mr. Carte has observed, in a note to p. 579. of his History of England, vol. i. that a story mentioned by some writers, and quoted from a manuscript History of the Life of Becket, preserved in Gresham College, is too absurd to need a serious refutation, as it is founded upon a supposition, that the two shillings an hyde, levied for *danegeld*, was not for the king's use, but was due to the under sheriffs, that held the county courts. Indeed both in that author, and in another Life of Becket, where I find it also mentioned, it appears a most idle and groundless tale, unsupported by all accounts of the revenue in that age. Yet this alone can, with any degree of propriety, be alledged as an instance of Becket's contending for the rights of the people against the crown, because, it is said, he maintained, that his tenants ought not, *de jure*, to pay that money, as belonging to the king. In all other respects his contention with the crown was so far from being any way beneficial to the people, that it tended to deprive them, where-ever clergymen were concerned, of the benefit of royal justice and royal protection. Nor had the cause he maintained the least connexion with their liberty, unless we suppose that their liberty consisted in making the church and all churchmen independent on the state, according to the principles of Gregory the Seventh. This most evidently appears from the account I have given of the whole process of his long dispute with the crown, on the authority of his letters, and those of his friends and the companions of his exile. But, as some persons think any opposition to a king a struggle for liberty, so others wish to recommend this prelate in that light to the esteem and favour of those, who would not respect him as a martyr for popery, in its most extravagant claims. A late writer, more ingenious than accurate or impartial, speaks of him as a guardian of the rights of the subjects, and standing in the breach against an arbitrary power, which would have

See the
History of
the Life of
Reginald
Pole, p.
227, 228.

OVER.

overturned them. One should imagine from these words, that the Constitutions of Clarendon had been ordinances imposed, not by the whole legislature, but by the arbitrary power of King Henry the Second. Whereas they not only were enacted by the advice and authority of parliament, but after a strict enquiry into what was the law and custom of the land before that time, which these statutes did no more than revive and confirm. The preamble to them says, "in præsentia ejusdem regis facta est ista recordatio vel recognitio cujusdam partis consuetudinum, et libertatum et dignitatum antecessorum suorum, videlicet, regis Henrici avi sui et aliorum, quæ observari et teneri debent in regno." What Becket opposed, even after this act of parliament, to which he had consented, is here declared, by the voice of the whole legislature, to be a recognition of customs, and liberties, and dignities of the king's ancestors, namely of King Henry the First and others, which ought to be observed and maintained in the realm. It was therefore the authority of the law, and of the legislature of England, not the lawless will or the arbitrary power of the king, against which Becket directed that opposition for which he has been sainted. The Great Charter does indeed begin with a confirmation of the rights and liberties of the church. "Imprimis concessimus Deo et hac præsentî cartâ nostrâ confirmavimus pro nobis et hæredibus nostris in perpetuum, quod Anglicana ecclesia libera sit, et habeat omnia jura sua integra et libertates suas illæsas." But it must be supposed, that these rights and liberties of the church were defined and limited by the laws and customs of the realm, and by that right, which is inherent in the supreme magistrate of every civil society, to administer justice impartially to all his people. That under the notion of ecclesiastical liberty the clergy meant *dominion*, appears undeniably from numberless facts in those times, and is plainly declared by a clergyman contemporary with Becket, who, speaking of the agreement between King Stephen and Henry Plantagenet, which (as it was made by the mediation of the bishop of Winchester) he supposed would confirm the pretensions of the church in their whole extent, cries out with a kind of rapture, *Clerus nunc demum DOMINABITUR!* But Henry, in concurrence with the whole legislature at the council of Clarendon, opposed the accomplishment of this prediction, and

V. Diceto
Imagines
Historiarum
inter D.
Scriptores,
col. 528. sub
ann. 1153.

(as

(as far as it could be done without an entire reformation from popery) resisted that *dominion*.

- P. 229, 230. On what foundation the above-mentioned writer affirms, "that the whole nation, at the accession of King Henry the Second, was in the utmost consternation, lest he should avail himself of the title of Conquest, and set aside the rights of the people, in imitation of the founder of the Norman line," I am at a loss to discover. Not one of the many contemporary writers says any thing like it; but all their histories are full of the national joy on that event. His treaty with Stephen was an unsurmountable bar to any title *by conquest*, if he had ever thought of setting up so wild a claim, which it was impossible he could do, as he had not even a *victory*, on which to ground it. While he was in arms against Stephen he had been chiefly supported by the English themselves; and after the death of that king the whole nation unanimously submitted to his government, without a blow being struck against his right of succession.

P. 375. *Becket had lately protested some clergymen, guilty of enormous and capital crimes, from being delivered up to the justice of the crown.*

V. Diceto
inter D.
Scrip. sub
ann. 1164.
P. 537.

Besides the instance I have given, and other similar cases, one is mentioned by some writers, as having greatly incensed and exasperated the king against the archbishop, but with circumstances so different, that the degree of guilt in the person whom that prelate protected against the royal justice cannot easily be discovered from these accounts. Diceto relates it in these words; "Huic controversiæ præstitit occasionem Philippus de Broc, canonicus de Bedeford, qui *tractus in causam propter homicidium* in justiciarium regis verbum protulit contumeliosum." But Fittsstephen says nothing of his having been indicted for murder or homicide, but only that he had affronted Simon Fitts-peter, before a great audience, and while Simon was employed in the king's service, upon a difference or quarrel which arose between them at Dunstable, where that magistrate was with other itinerant justices. "Item erant regis justiciarii itinerantes aliquando apud Dunstapulum: orta est aliqua altercatio inter Simonem filium Petri, et quendam canonicum Bedefordiæ Philippum de Brois. Questus est pos-

" tea

"tea Simon regi, quod eum Philippus, in obsequio ipseus
 "et magna audientia, turpiloquio inhonorasset." And
 one of the writers of the *Historia Quadripartita* tells the
 fact in these words: "Circa idem tempus Philippus
 "quidam de Lidrois, canonicus, justiciarium regis quibus-
 "dam contumeliis affecit," without any mention of his
 being at the bar before the king's justices, on a charge of
 so heinous a nature. Probably, the account that is given
 by Diceto is the truth, which the other writers have
 softened. They also differ in their accounts of his punish-
 ment. Fitzstephen says, "Clerus ad regem mitigandum
 "decrevit, per annum beneficio præbendæ suæ, simul et
 "regni inhabitatione, Philipum privandum. Ita factum
 "est, nec tamen regi satisfactum est." Diceto says, Pre-
 "bendæ suæ multatus est beneficio, pulsus est a regno
 "per biennium." In the *Historia Quadripartita*, or
Quadrilogus, it stands thus: "Querelâ ad archi-
 "præfulem delatâ dictus clericus, etiam supra mo-
 "dum delicti, ut vel sic facilius quiesceret regis indigna-
 "tio, est punitus, publicæ scilicet virgarum disciplinæ
 "adjudicatus, et per annos aliquot ab omni officio et eccle-
 "siastico beneficio, quod in regno habebat, suspensus." In the copy of this book prefixed to Becket's Letters, in-
 stead of *Philipus de Lidrois* it is *Philippus de Brois*.

P. 383. 384. *It is my master's pleasure I should forswear myself, and at present I submit to it, and do resolve to incur a perjury, and repent afterwards as I may.*

The words in the original are, "*Est domini mei volun-
 "tas ut pejerem, et ad præsens subeo, et incurro perju-
 "rium, ut potero pœnitentiam acturus in posterum.*" It
 is not quite clear whom Becket meant by the word *domini*
mei, whether the king or the pope. If he meant the
 pope (whom in his letters he often calls *his master*), the
 reason must have been, that the friends he had gone to
 consult with had persuaded him to think, that his dissem-
 bling on this occasion, even so far as to take an oath he
 was determined to break, would be more agreeable to
 Alexander, than that he should stand the present danger
 of refusing to take it.

P. 386. *It must also be observed that Baronius, who, in writing of these times, has transcribed several letters out of the Vatican manuscript of the same collection, and particularly that to which this appears to be an answer, has*

NOTES TO THE THIRD BOOK OF

has omitted to transcribe or mention this: and (what is no less remarkable) in the printed edition made at Brussels from the Vatican manuscript, this is also left out. The letter to which this is an answer stands in the Brussels edition Epist. 108. but its proper place is immediately after the letter from the clergy of England to Becket, which is there the 126th of the first book.

B. 386: *If any dispute shall arise concerning the advowson and presentation of churches, between laymen, or between ecclesiasticks and laymen, or between ecclesiasticks, let it be tried and determined in the court of our Lord the king.*

Before the establishment of the spiritual court in England, rights of advowson were tried in the county courts, where the presence of the king's officer and other lay assistants prevented partial and unjust decisions by the ecclesiastical judge. But, after the separation of the ecclesiastical and civil jurisdictions by William the Conqueror, the clergy endeavoured to draw all causes of this nature into the spiritual court, which was very prudently resisted by the civil power in those days, and the trial thereof reserved to the king's supreme court.

P. 387. *It is unlawful for archbishops, bishops, and any dignified clergymen of the realm, to go out of the realm without the king's license; and if they go, they shall, if it so please the king, give security that they will not, either in going, staying, or returning, procure any evil, or damage, to the king, or the kingdom.*

This was enacted to prevent the too frequent and dangerous intercourse between the pope and English prelates. I agree with Mr. Seldon, that the words in the original constitution, *personæ regni* should be translated *dignified clergymen*. See Titles of Honour, p. 732, 733. It takes in abbots, priors, the king's chaplains, and all clergymen who held of him in chief; but does not here, I think, extend to all *parsons*, or *beneficed clergymen*, as the word is commonly translated.

Ibid. *Persons excommunicated ought not to give any security by way of deposit, &c.*

The words in the original are, "non debent dare *vadum ad remanens*;" which being somewhat obscure have been differently translated by different authors. I have rendered

tendered them according to the best information I could gain of their legal sense.

Ibid. No tenant in chief of the king, nor any officer of his household, or of his demesne, shall be excommunicated, nor shall the lands of any of them be put under an interdict, unless application shall first have been made to our lord the king, if he be in the kingdom; or, if he be out of the kingdom, to his justiciary; that he may do right concerning such person, and in such manner, as that what shall belong to the king's court shall be there determined, and what shall belong to the ecclesiastical court shall be sent thither, that it may there be determined.

One reason, assigned for this by the authors of those times, is, that the king should not ignorantly be exposed to converse with an excommunicated person. But, to prevent *that*, a bare notice given of it to the king would have been sufficient; whereas the constitution itself declares the intention to be, *that the king may do right concerning such person*. And it not only secures the persons of the king's tenants and officers from excommunication, but also their lands from an interdict, without application to him. It appears from a passage in one of Becket's own letters, v. Diceto; col. 536. M. Paris; v. Epist. S. T. l. i. Epist. 96. that he himself understood the sense of it to import, only that notice ought to be given to the king of the excommunication or interdict; but that his leave must be obtained. In truth it was meant as a check upon the power of the spiritual court; and (as appears from Eadmer) was coeval with the establishment of that court in England. Yet the latter part of it shews, that it did not take from thence all power of inflicting the discipline of the church on scandalous sinners because they held of the king, or served him, as his officers; but only prevented the exercise of that jurisdiction over his tenants and officers, without a reasonable cause, or in cases not properly cognizable there, but belonging to his courts of civil or criminal justice. The only fault of this law seems to have been the limitation of it, in making that a privilege of one class of the people, which was a right due to all.

P. 387, 388. *Concerning appeals, if any shall arise, they ought to proceed from the archdeacon to the bishop, and from the bishop to the archbishop. And, if the archbishop shall fail in doing justice, the cause shall at last be brought to our lord the king, that by his precept the*

dispute may be determined in the archbishop's court, so that it ought not to proceed any further without the consent of our lord the king.

V. Epist.
S. T. L. I.
epist. 38.

In a letter of the bishop of London to the pope concerning the dispute between the king and Becket he explains this constitution as being no *prohibition* of appeals to Rome, but only a check on their being carried thither *unnecessarily*, and *without the leave of the king*. His words are these: "*In appellationibus ex antiqua regni sui consuetudine id sibi vindicat (rex scilicet) honoris et eneris, ut ob civilem causam nullus clericorum regni sui ejusdem regni fines exeat, nisi, an ipsius auctoritate et mandato jus suum obtinere queat, experiendo cognoscat. Quod si nec sic obtinuerit, ad excellentiam vestram, ipso in nulla reclamante, cum volet quilibet appellabit.*" Without question there is not in the words of this constitution any direct prohibition of appeals to Rome; it being only declared, that, upon an appeal from the archdeacon, the cause ought not to proceed any further than the archbishop's court *without the consent of the king*. But in effect this restraint would generally have stopped the cause in *that court*; and it manifestly asserted the royal supremacy, by subjecting the power of appealing to Rome, in ecclesiastical causes, to the will and pleasure of the king: whereas the pope claimed the right of receiving such appeals as inherent in his see. Henry's desire of gaining the consent of the bishops to this constitution was the reason of his avoiding an *express prohibition*: but he intended it should have the same operation, and the pope saw that intent.

P. 388. *Pleas of debt, whether they be due by faith solemnly pledged, or without faith so pledged, belong to the king's judicature.*

The clergy of England began first in the reign of King Stephen to extend their jurisdiction in the spiritual courts to the trial of persons for breach of faith (*pro lésione fidei*) in civil contracts; by which means they drew thither a vast number of causes which belonged to the civil courts, and of which they had no proper cognisance. To this encroachment they were instigated by the bishops of Rome, and therefore Alexander condemned the above-re-cited statute, which was made to prevent it.

P. 389.

P. 389. *When an archbishopsrick, or bishopsrick, or abbey, or priory, of royal foundation, shall be vacant, it ought to be in the hands of our lord the king, and he shall receive all the rents and issues thereof, as of his demesne; and when that church is to be supplied, our lord the king ought to send for the principal clergy of that church, and the election ought to be made in the king's chapel, with the assent of our lord the king, and the advice of such of the prelates of the kingdom as he shall call for that purpose; and the person elect shall there do homage and fealty to our lord the king, as his liege lord, of life, limb, and worldly honour (saving his order) before he be consecrated.*

Of the foundation of the right asserted to the king by this statute enough has been said in the preceding book of this History. I will only add here, that the same practice prevailed in the kingdom of France, in the duchy of Normandy, and in the Norman kingdom of Sicily. Notice has also been taken of the *saving clause* at the end of it, which certainly opened a wide door to elude all the obligations contracted by the prelates in the act of homage and oath of fealty; though I find it affirmed by Becket, in a letter to the pope, *that the same form was then used by the whole Christian church*. He likewise adds, that when his Holiness absolved him from the oath he had taken at Clarendon, that pontiff told him, *that not even for the preservation of his life should a bishop lay himself under any obligation without a saving to his order and to the honour of God*: which he adhered to pertinaciously in his whole dispute with the king. As for the form of election, which is laid down in this statute, it must be observed, that the making it *in the king's chapel*, by the principal clergy of the vacant church, with the advice of only *such of the prelates of the kingdom as he should call for that purpose*, seems to have been a practice of no very ancient date, not older, I presume, than the reign of Henry the First, or William Rufus. For Mr. Tyrrel has proved by many authorities, that, during the times of the Saxons, the English prelates had been usually elected in the witenagemote, or great council, and with the advice, or concurrence, of the whole assembly. It likewise appears from the Saxon Chronicle, that the same form was continued under William the First. The words are these: "*Hoc anno (1070) Lanfrancus, Cadomensis Abbas, compellentē rege Wilhelmo, et jubentē Papa Alexan-*

See p. 314.
book ii.

See p. 213.
book ii.

V. Epist. S. T.
C. liv. epist.
6.

See Tyrrel's
General In-
troduction
to his His-
tory of Eng-
land, from
p. 113 to p.
115.
Chron. Sax.
edit. Oxon.
p. 174. 175.

“dro, Angliam venit; et primatum regni Anglorum in ecclesiâ Cantuariensi suscepit, eligentibus eum senioribus ejusdem ecclesiæ, cum episcopis, et principibus, clero et populo Angliæ, in curia regis.” But whatever form, or appearance, of more or fewer electors, had been kept up in those times, or was continued in those of which I write, it appears from a passage in a letter of Peter of Blois, which is inserted in the Appendix to the preceding book of this History, that *the chief power* in these elections was *by the constitution of the kingdom* assigned to the king. Speaking of Henry the Second, he says, “Cum autem juxta regni consuetudinem in electionibus facienda potissimas et potentissimas habet partes, &c.” Indeed the statute here recited requires no more, than that the prelate shall be elected *with the assent of the king*; but in fact that assent was little different from a real nomination. The pope and clergy were desirous to exclude the king and all the laity from any share in their elections, which was one principal reason of Alexander’s condemning this statute.

V. Epist. Petri Blefensis ad Archiepiscopum Panormitanum, in Appendixe.

P. 398. *Another request had been made to Alexander by Henry, and pressed with great eagerness, which was, that a commission appointing him legate over the whole kingdom of England should be granted by his Holiness to the archbishop of York, and sent to Henry to be delivered by him to that prelate, whenever he should think proper.*

Some eminent writers, upon the authority of Hoveden, have erroneously supposed that a legantine commission was now granted to Henry for his own use and benefit.

V. Epist. S. T. e Cod. Vatican. l. i. epist. 4.

But the pope says to Becket, in a letter on this subject, that the king had asked it of him for the archbishop of York, not for himself. “Cum olim (filius noster Henricus &c.) à nobis et fratribus nostris instantius postulasset legationem totius Angliæ Eboracensi archiepiscopo indulgeri,” &c. And afterwards, in the same letter, “Legationis literas præfato archiepiscopo concedendas eidem regi concessimus.” And in another, on the same occasion, “Non ob gratiam concessæ legationis animus tuus deficiat, &c. Quoniam nos antequam ad hoc deduceremur, et liberum tribueremus consensum, prædicti nuncii nobis ex parte ipsius regis firmiter in verbo veritatis promiserunt, et super hoc, si vellemus, recipere juramentum obtulerunt, quod nunquam sine voluntate vestrâ eadem literæ archiepiscopo Eboracensi redderentur.”

Ibidem, epist. 5.

“*tur.*” John of Salisbury likewise says, in another letter to Becket concerning this business, “*Ut pro certo accepimus, domini Eboracensis legatio omnino expiravit.*” The mistake of Hoveden might arise from the letters of legation being sent to the king who desired to deliver them himself to the archbishop of York.

P. 396. *But his answer to this summons was an express declaration, that he would not obey it.*

In all this account I follow the authority of the bishop of London's letter to Becket concerning this transaction. I have given it in the Appendix belonging to this book, from the Cottonian manuscript now repositied in the British Museum; but it may be proper here to recite that part thereof, which relates to this matter. The words are these: “*Perlatum est ad vos mandatum regium, ut cui-*
“*dam regni nobilium, super prædio quod à vestrà vendi-*
“*cabat ecclesiâ, quod justum foret exhiberetis. Qui post*
“*statutos dies ad regem reversus asseruit, se penes vos justi-*
“*ciam assequi nequivisse, et se ad id ipsum, juxtà regni*
“*statuta, coram vobis, suo congruoque testiâ juramento,*
“*comprobasse. Quo regem prosequente diutius, et super*
“*exhibendâ sibi justiciâ quotidie supplicante, domini nostri*
“*regis ad vos est emissâ citatio, ut statuto die se vestra*
“*sublimitas sibi exhiberet, ut, quod ipso mandante non*
“*egerat, eo cognoscente, litemque judicio dirimente com-*
“*pleret. Non est à vobis hæc admissa citatio, verum vos*
“*in hoc sibi minime paritutum declaravit a vobis ad ip-*
“*sum delegata responsio. Arbitratus hoc ipso dominus rex*
“*juri suo detrahi graviter in potestati, ecclesiâ regni*
“*jussit ad conciliû Northamptoniam convocari. Conve-*
“*nit populus, ut vir unus, et assidentibus sibi quorum id*
“*dignitati congruebat et ordini, quod dictum est super*
“*exspreto mandato suo, in querelam adversus vos, usus,*
“*quâ decuit, modestiâ et venustate, proposuit. Porro*
“*quod intendit, fratrum vestrorum non expectato vel ex-*
“*petito consilio, vestra in continenti confessio confirma-*
“*vit, adjiciens, vos ob id non paruisse mandato, quod Jo-*
“*hannes ille, qui regis ad vos mandatum pertulerat, in*
“*vestrà præsentia, non evangelio sed tropario quadam pro-*
“*posito, juravisset. Est itaque dictum in communi cau-*
“*sâ non tam esse ob quam mandatum regium oportuisset*
“*omississe; regni que fere consuetudinem, in offensis bujus-*
“*modi, multâ pecuniariâ suam rem taxante misericordiâ*
“*placari regem. Paruit regiæ sublimitas vestra sententiæ,*
“*ad*

Bib. Cott.
 Claudius,
 b. 2. 3. f. 92.

“ ad plenum cavens super judicati solutione.” The recapitulation here made of all that passed on this occasion, in a letter to Becket himself, from the bishop of London, who was present at the whole proceeding, is of far greater authority than any relations of contemporary historians ; and therefore whatever is said, by any of those writers, inconsistent therewith, deserves, I think, no credit. But the grounds of the sentence, and the form of it, as given by Fitzstephen, perfectly agree with the facts, as stated in the letter, though not as they are related by that writer himself. His account of it is as follows : “ Visum est
 “ omnibus, ex reverentiâ regis majestatis et ex astricti-
 “ onē ligii homagii quod domino regi facerat archiepiscopus,
 “ et ex fidelitate et observantiâ terreni ejus honoris
 “ quam ei juraverat, quod parum esset defensus vel excu-
 “ satus, quia citatus à rege neque venerat, *neque corporis*
 “ *infirmi-
 “ infirmitatem, vel necessariam, quæ deferri non posset,*
 “ *officii ecclesiastici administrationem, per nuncios allega-*
 “ *verat. Condemnandumque eum dixerunt in poenam pecu-*
 “ *niariam omnium donorum suorum mobilium ad misericor-*
 “ *diam regis.*” But in the *Historia Quadripartita* it is said, that Becket proved he had sent a sufficient answer. “ Tra-
 “ hitur in causam archiepiscopus, quod ad quandem regis
 “ citationem se in propria personâ non exhibuerit. Qui,
 “ licet sufficientem responsionem pro se misisse probaverit,
 “ tamen omnium, tum procerum, tum etiam pontificum
 “ judicio, mox omnia bona ejus mobilia sunt confiscata,
 “ nisi forte regia clementia vellet temperare judicium.
 “ Quod, sicut vulgo dicitur, *De omni nobili suo in regis*
 “ *miseri-
 “ misericordia judicatus est.*” Gervase likewise affirms, that it was not from contempt, but from his being unwillingly detained by a violent fit of sickness, that he did not obey the king’s citation, and adds, that he made this excuse by message in due form. “ Quod autem super hoc citatus
 “ ad regis non venit præsentiam non contemptus fuit, sed
 “ infirmitate valida inquitus retentus est, atque super hoc
 “ per duos legales viros, quos ipse miserat, excusatus est.” Which is directly contrary to the letter above-recited, and to the grounds of the judgment as we find them delivered by Fitzstephen in the passage before quoted. I will add, that the pope’s decree annulling that judgment (which the reader may see in the Appendix to this book) alledges no such message, nor any sickness of Becket, but objects to it from reasons derived only from the policy and claims of Rome ; whence, I think, we may draw a very strong

presumption, that the account given by Gervase had no foundation of truth. It is also remarkable, that, in the *Historia Quadripartita*, Becket is said to have complained, not that his plea of having been unwillingly detained by sickness had not been accepted, but *that this was a new form of judgment according to the new canons promulgated at Clarendon. For it had never been heard of before, that an archbishop of Canterbury was tried in the court of any king of England for any cause whatsoever, as well in respect of the dignity of the church, and the authority of his person, as because he was the spiritual father of the king and of all in the kingdom, on which account they were all bound to defer to him in all points.* “Cum vero
 “audisset se judicatum sic, qualem, inquit sit judicium hoc?
 “Me etiam tacente secula post-futura non tacebunt. No-
 “va quippe judiciorum forma hæc est, forte per novos
 “canones proxime apud Clarendon promulgatos. Siqui-
 “dem a seculo non est auditum quenquam Cantuariæ ar-
 “chiepiscopum in curiâ regum Anglorum pro qualicunque
 “causa judicatum, tum propter dignitatem ecclesiæ, tum
 “propter auctoritatem personæ, tum quod ipse regis et om-
 “nium qui in regno sunt spiritualis pater est, et ob id
 “semper ei deferendum ab omnibus.” The same writer adds, that he complained much more of his brethren the bishops, than of the judgment itself, or of the temporal barons who judged him, “multo magis quam de iudicio, vel
 “proceribus judicantibus, de confratribus suis et coepi-
 “s copis querebatur,” because it was contrary to the order and course of justice, *that an archbishop should be judged by his suffragans, or a father by his sons; “ut archi-
 “præsul à suis suffraganeis, aut pater a filiis judicetur.”* I have followed Hoveden in saying that it was understood that a fine of five hundred pounds would be accepted by the king, at whose mercy this sentence left all the archbishop’s goods and chattels. The words of that historian are these: “Et barones curiæ regis judicaverunt eum esse in
 “misericordia reges, et, quamvis archiepiscopus niteretur
 “judicium illud falsificare, tamen prece et consilio baronum
 “posuit se in misericordiâ regis de quingentis libris et inve-
 “nit ei fidejussores.” From hence it seems, that a fine of five hundred pounds in the money of those days was the usual composition for those whose goods and chattels were thus declared to be at the king’s mercy, in *misericordia regis*. But neither Hoveden, nor any contemporary writer except Fitzstephen, makes any mention of Becket’s having com-
 M 4 plained

plained to the bishops, that they had laid an excessive fine upon him, because, as an inhabitant of the county of Kent, he ought, by the custom of that county, to have paid but *forty shillings* for a default of this nature.

See Tyrrel
and others.

R. 588.

Some of our modern historians, in their accounts of this proceeding, have translated the word *Troparium*, or *Tropar*, *Song book*: but Mr. Carte more truly renders it a *book of Hymns sung in church before the introit of the communion service*; and says in a note, "It was usual to put some passage of the Gospels at the head of such books used in the divine service; and I have seen in old manuscripts the beginning of the Gospel of St. John so placed on purpose for people to swear on." It is reasonable to suppose it was so in this instance; and then nothing could be more frivolous than Becket's objection; but an oath upon a *Song book* could not have been admitted in any court.

It may be worth observing here, that, by the passage above-recited from the bishop of London's letter, it seems that the appellation of *vestra sublimitas*, *your sublimity*, was given in those days to archbishops of Canterbury: yet I do not find it in the letters of Becket's other correspondents.

P. 397. *We are told by one author, that this sentence was pronounced by the bishop of Winchester, at the command of the king: but I think the fact very doubtful.*

The silence of all the contemporary writers, except Fitzstephen, is alone a sufficient reason to doubt of the truth of this particular; but, if we consider the improbability of it, that doubt will be strengthened. For, in all accounts of the proceedings of the third day, we find, that the sentence of the court against Becket was to have been pronounced by the earl of Leicester, to whom, as grand justiciary, it properly belonged. And no reason appears, why in the trial of one of the spiritual lords, upon a charge of this kind, the temporal barons should say (as Fitzstephen makes them do) *vos, episcopi, pronuntiare debetis sententiam, ad nos non pertinet*. This cause was certainly not *ecclesiastical*; nor is it probable that the king would allow it to be so, and confirm that notion by committing the declaration of the judgment to one of the prelates. But, if the temporal lords and the king himself had so unaccountably erred in the nature of this proceeding, the pronouncing of the sentence would more naturally

turally have belonged to the archbishop of York, than to the bishop of Winchester, one of Becket's suffragans.

P. 398. *The next day the king demanded of the archbishop five hundred pounds, which he said he had lent him, when that prelate was his chancellor. Becket affirmed, that it was given, not lent: but, as he could not prove the grant, the court condemned him to pay the money back, and he submitted to the sentence; five of his vassals offering themselves to be his sureties, as they saw the bishops unwilling to pledge themselves for him any further.*

This account is taken very exactly from Herbert de Boscama, one of the writers from whose history of these transactions the *Quadrilogus*, or *Historia Quadripartita*, and the Life prefixed to Becket's Letters in the Brussels edition, are compiled. There are some small differences in the passage as it is printed in those books, but not worth observing here. I will only take notice, that the authority of Herbert de Boscama, in this particular, is supported by Gervase of Canterbury; and that the former was present at this whole proceeding. Yet Fitzstephen, who was also present, takes no notice of this demand of five hundred pounds, but mentions one of three hundred, which Henry made upon Becket, from his receipts of the lands belonging to two castles which had been in his custody; and another of five hundred marks, which that prince said, he had lent him in the Toulouse expedition: and a third of the same sum, for which he had been his surety to a certain Jew of that country. To the first of these, he says, the archbishop (after arguing, that he was not bound to make any answer thereupon, not having been cited concerning it) did nevertheless plead, that he had spent this money, and much more, in the repairing of those castles and of the royal palace at London, *as might evidently appear from the repairs themselves*. But, the king not confirming the truth of this assertion, and, on the contrary, demanding, that the cause should be tried, Becket voluntarily acquiesced in the payment of the money, for the sake of avoiding any offence to that prince on a pecuniary matter, and found three lay sureties, one of whom was the earl of Gloucester, *among his own vassals*.

What credit is due to this, or to what is said of the two other demands above-mentioned, the reader will judge: but it is unsupported by the testimony of any other historian who

who lived in those times; and one can hardly conceive, that they should all have passed it over in silence, had they known it to be true. Nor could it possibly have escaped the particular knowledge of Herbert de Boseham, who was present in the court. He and all of them were desirous to exaggerate the severity of the proceedings against Becket, rather than to suppress any part of them which might be thought a hardship. On the other hand, no mention is made by this author of the demand of five hundred pounds, which Herbert de Boseham and Gervase say, the king declared he had lent to that prelate; unless we suppose that the loan of five hundred *marks* in the Toulouse expedition, or that other of the same sum, for which the king was his surety (as we are told by Fitzstephen) is to be understood to mean the same demand, notwithstanding the difference between *marks* and *pounds*, and though nothing is said there of his having agreed to pay the money, and found *five* sureties. Upon the whole, I think the authority of this historian too slight to be followed in any material variation from the others contemporary with him, especially in his accounts of these publick transactions.

P. 405. *The king in the mean while had demanded justice against him from the temporal peers, and had called in certain sheriffs, and some barons of inferior dignity, to assist in the judgment.*

The words of Fitzstephen, from whom I take this account, are these: "Evocantur quidam vicecomites et secundæ dignitatis barones antiqui dierum, ut addantur eis, et assint iudicio." The question is, who were these *secundæ dignitatis barones*. Bracton says, "*Comites, vel barones, non sunt amerciandi nisi per pares suos, et secundum modum delicti, et hoc per barones de scaccario, vel coram ipso rege.*" It seems by this passage that the *barones de scaccario* were then esteemed *pares baronum*. Mr. Selden says, "perhaps the barons of the Exchequer were therefore in former ages called so, because they were anciently made of such as were barons of the kingdom, or parliamentary barons. If otherwise, why were they styled *pares* or *peers* to parliamentary barons in Bracton?" Whether in the time of Henry the Second the barons of the Exchequer were all barons of the kingdom I do not find. If they were not, some of these might be the *barones secundæ dignitatis* here-mentioned. The sheriffs, said by the same author to have been likewise called in, to assist

V. Stephanid. in vitâ S. T. Cantuar. L. iii. de Coronâ, c. i.

Titles of Honour, 2d part, sect. xvi. p. 717.

assist

sat in this judgment, were not *barons of the kingdom* (though it appears that many sheriffs were so at that time;) for if they had, they must of course have concurred in the judgment, as *peers*, and could not have been mentioned with the *barones secundæ dignitatis*, called to it by the king. That *barones secundæ dignitatis*, in the general sense of the words, meant great lords of manors, *not holding of the king*, and therefore inferior to *his barons*, but who had *court barons* under them, and in many records are called *barones*, I have hardly any doubt. But the difficulty lies, in their being joined to the *barones regis*, the *greater barons* in the judgment of a bishop upon an accusation in parliament. That in calling them in the king did nothing irregular against the privilege of the peerage, or the law and usage of those times, may be reasonably inferred from no complaint being made of it in any of the letters of Becket, or those of his friends, concerning this affair, or in any history of his life, or chronicle of this reign. He and all his apologists would undoubtedly have taken advantage of any irregularity, to have impeached the proceeding, as illegal and void. Whether the barons of the Cinque Ports were then esteemed as *peers* to the king's barons, so far as to be capable of concurring in a judgment where those were concerned, I cannot say. It must be noted, that in the passage here considered it is not said, that *all* the sheriffs, or *all* the *barones secundæ dignitatis*, were called in, to this judgment, but only some of each class, and they, *antiqui dierum*, aged men; as we find that in framing the constitutions of Clarendon the *antiquiores regni* were consulted, on the meaning of which term a good deal has been said in one of the notes to the foregoing book of this History. The word *evocantur* expresses that they were called out of *the general assembly*, from which the king's barons were separated before. Possibly they were not called to *concur* in the judgment, but only as *assistanti, ut assint iudicia*, in order to give it a greater solemnity, or for their advice as to the method and order of proceeding.

Mr. Selden says, in his Treatise on Judicature in parliament, "Here ariseth a question, whether the spiritual lords *de jure* are triable by their peers, or no. Out of parliament they are not to be tried by the peers; but the doubt is, whether in time of parliament they are to be so tried or not. To me it

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NOTES TO THE THIRD BOOK OF

"seems they may, if the matter be moved against them in Parliament." And afterwards, "There be divers precedents also of the trial of bishops by their peers in parliament, as well for capital offences, as misdemeanours, whereof they have been accused in parliament." And he gives two precedents of archbishops of Canterbury so tried for misdemeanours and for treason, to which may be added this of Becket.

P. 406. *Nor could he refrain from revenging himself upon two of the most clamorous, by very foul language; &c.*

I relate this on the authority of William of Canterbury, as cited in the *Quadriologus*, or *Historia Quadripartata*, and, with some unimportant variations, in the Life of Becket prefixed to the Brussels edition of his Letters. This author must not be confounded (as he has been by some writers) with William Fitzstephen, from whom he differs materially in this and other particulars. For the latter, though he mentions the reproaches cast on Becket, takes no notice of the answers returned by that prelate, but says only, "*O quantum sustinuit in illa die in spiritu martyrium!*" because, I presume, he was sensible that such opprobrious railings, and foul language, were by no means agreeable to the patience of a martyr, or the temper of a saint.

P. 407. *Presently afterwards he received a message from that prelate, by the bishops of Hereford, Worcester, and Rochester, requesting his licence to go out of the kingdom.*

The words of Herbert de Boscama, in the *Historia Quadripartita*, are: "*Hymno vero dicto, archiepiscopus surgens a mensa confestim Rogerum Vigornensem, et Robertum Herefordensem episcopos, et Rossensem episcopum, proprium capellanum suum, ad regem misit, postulans ab eo securum de terra sua egressum.*" Gervase of Canterbury also says, "*Vocatis autem tribus episcopis, quos arctius diligebat, ipsis mediantibus petivit a rege liberum de terra egressum.*" The obvious sense of the words *liberum de terra vel securum de terra sua egressum*, is licence to go out of the kingdom; or, as Mr. Tyrrel expresses it, to go beyond sea. But, from the words

of Fitzstephen, in his Life of Becket, it should seem, that he only desired the king's leave to go from Northampton under a safe conduct. "*Postea tres episcopus, Walterum Roffensem, &c. misit regi archiepiscopus, querere ab eo licentiam et conductum præstari sibi in crastino recessuro.*" This may be thought the most probable; but Herbert de Boseham's authority in this instance is superior to that of Fitzstephen, as it appears that he was with Becket when this message was sent, and the only one of his attendants entrusted by that prelate with the secret of his flight. For he says, just before the account he gives of the message, *respexit* (archiepiscopus scilicet) *ad discipulum qui scripsit hæc.*" And afterwards, "*Igitur archiepiscopus, clam de nocte fugiens, fratrem unum de ordine de Simplingeham secum habens, me ducem, versus Aquilonem ad nobilem illam civitatem Lincolniam tendebat.*"

P. 429. *Archbishops, bishops, and all dignified clergymen who hold of the king in chief, have their possessions from the king as a barony, and answer thereupon to the king's justices and officers, and follow and perform all royal customs and rights, and, like other barons, ought to be present at the trials of the king's court with the barons, till the judgment proceeds to loss of members or death.*

The evident intention of this constitution, or statute, was, to enforce on the prelates the obligations and duties arising from their baronies, as settled by the legislature under William the First, against the immunities they now claimed, and particularly the service of attending the judicature of the *curia regis* in all trials there. The exception to *cases of blood* seems to have been grounded on that part of the canon law, which had been received in this kingdom. For in the council of London held under Lanfranc, archbishop of Canterbury, in the ninth year of William the First, some canons made in Spain were admitted and confirmed, by which no bishop, or abbot, or ecclesiastical person, was allowed to judge in cases extend-

ing to life or limb, or to assist in such judgments. "*Ex concilii Eliberetano et Toletano undecimo, et nullus episcopus, vel abbas, seu quilibet ex clero, hominem occidendum vel membris truncandum judicet, vel iudicantibus suæ auctoritatis favorem commodet.*" Concerning this point there is a remarkable passage in the works of Peter de Blois. He says, in his treatise *De Institutione Episcopi*, "*Illud cælestem exasperat iram,*

et

“ et plerisque discrimen æternæ damnationis accumulatur,
 “ quod quidam principes, sacerdotes, et seniores populi,
 “ licet non dicunt judicia sanguinis, eadem tamen trahunt
 “ disputando, et disceptando de illis, seque ideo immunes
 “ a culpâ reputant, quod mortis aut truncationis membra-
 “ rum judicium decernentes, a pronuntiatione duntaxat
 “ aut executione pœnalis sententiæ se absentant.” This
 proves undeniably, that in Henry the Second's time, the
 prelates only withdrew from the pronouncing of the sen-
 tence in cases of blood, but not from the trial, or from
 any debates thereupon.

P. 429, 430. *The sons of villeins ought not to be ordained
 without the consent of their lords, in whose lands they
 are known to have been born.*

The reason of this was, that the ordaining of a slave
 had the effect of an enfranchisement, and therefore, the
 sons of villeins being born in slavery, it was robbing their
 lord, to set them free in this manner, without his consent.

P. 433, 434. *For, about the beginning of the year 1165,
 he banished out of England, by a general sentence, all
 the relations, friends, and dependents of Becket, &c.*

P. 52. Among these Fittstephen particularly mentions some
 who had given him a night's lodging in England when he
 fled from Northampton, and before he passed the sea; “ qui
 “ eum vagum in Anglia a facie regis et profugum unum
 “ nocte susceperant.” The others, who were not of his
 kindred, appear to have been chiefly his chaplains and ser-
 vants, *clerici ejus et servientes.*

Ibidem.

P. 435. *Ranulph de Broc, who had the principal care of
 this business, was a man of a cruel nature; and Gerbaise
 of Canterbury, who describes him as such, seems to im-
 pute these barbarities chiefly to his hatred of the arch-
 bishop, whose enemy he had been for some time.*

P. 51. This is further confirmed by the testimony of Fittstephen,
 who says, in his Life of Becket, “ Secundo die natalis, ve-
 niunt Londoniam apparitores et officiales regis, inter
 “ quos quidam Randulphus de Broc, scelere ante alios im-
 “ manior omnes, cui etiam, laico crudelissimo et archiepif-
 “ copi inimicissimo, sanctam illam ecclesiam Cantuarien-
 “ sem, primariam Anglorum sedem, custodiendam, immo
 “ potius destruendam, commisit. Iste cum aliis quibusdam
 “ regii mandati est executor: faciunt impenetrata, et
 “ præora impetratis.

P. 436.

P. 436, *for the iunocent sufferers met with pity and kindness in their exile : &c.*

Fittstephen tells us that all the women and infants were taken into nunneries. In citing this author, I generally follow a printed copy of his History in the British Museum, which, though published at London in the year 1724, is become very scarce : but there are many manuscripts of it in different libraries, some of which I had seen before I knew of this edition.

P. 52.

P. 442. *But, to punish them as much as lay in his power, he commanded the eyes of the hostages they had formerly given him to be now put out, &c.*

Hoveden and Dr. Powel, in his Welsh chronicle, have given different accounts of this fact. The words of Hoveden are : “ Justiciam fecit de filiis Ris, et de filiis et filibus nobilium suorum, oculos puerorum eruit scilicet, et nares aureque puellarum abscidit.” The Welsh historian takes no notice of any girls having been punished among the hostages, nor does he confine this cruel execution to those received from the prince and nobles of South Wales, but says, “ *the king caused the pledges eyes (whom he had received long before that) to be put out ; which were Rbees and Cadwallon, the sons of Owen, and Cynwrick and Meredyth, the sons of Rbees, and others.*”

P. 445. *And, undoubtedly, if he had died without a son, her pretensions, and those of her husband in virtue of his marriage, might have occasioned a civil war in France ; which probably would have ended in the settlement of the kingdom upon the house of Plantagenet : &c.*

It is supposed by some late French writers, that the exclusion of females from the succession to the crown of France was founded on the apprehension of being governed by a foreigner : but against that apprehension it would have been sufficient to forbid any princess of the royal blood of France to marry a foreign prince, on pain of being excluded from the right of succession ; as we find to have been done by a fundamental law of the kingdom of Portugal, from which the house of Braganza derives its right, to the crown, in preference to the issue of an elder

elder daughter so married. And that there was nothing decided, with regard, to this question, in the times of Louis le Jeune, so as clearly to establish the exclusion of a daughter of France, either on account of her sex, or, by reason of her marriage with a foreign prince, appears from the words of that monarch recited in the text.

See p. 445.

P. 455. *These have been very improperly confounded by historians with the Vaudois and Waldenses, who differed but little from the doctrines of the reformed churches in our days: whereas the Cathari were imbued with opinions destructive of true Christianity, if we can give any credit to the accounts that are delivered of their tenets by the best contemporary authors. But even the best, in these points, must be read with doubt and caution.*

V. Joh. Conrad Fueslini
Dissertatio
de Fanaticis
Seculo XII
in Anglia
reperitis, p.
11, 12, 14,
15.

V. Histoire
Generale
des Eglises
Evangeliques
des
Valles de
Piemont.

The Waldenses were posterior to the Hereticks mentioned by William of Newbury; for Waldo, from whom that sect was named, did not begin to make any proselytes to his doctrine till some years after the time when those Germans came into England. The Vaudois, that is the inhabitants of the valleys of Piemont, held the same tenets with the Waldenses, but had professed them long before, as has been proved incontestably by their best historian, *Leger*. As for the Albigenes, I do not find that appellation made use of to denote any Hereticks till the beginning of the twelfth century; but the Council of Tours, in the year 1163, made a canon, which says, “A partibus *Tolosæ* damnanda Hæresis dudum emerfit, quæ more canceri paulatim se ad vicina loca diffundens per Gasconiam et alias provincias quam plurimos, jam infecit,” &c. And William of Newbury, in the account he gives of these Hereticks, so cruelly punished in England in the year 1166, says, that they were believed to be “ex eorum genere quos vulgo *Publicanos* vocant.” And adds, that those Publicans had spread from *Gascony* into Germany and many other countries. Matthew Paris also gives us the title of one of the canons of the Lateran council held in the year 1179, under Alexander the Third, in these words, “de Hæreticis *Albigensibus* et diversis eorum appellationibus.” And the canon itself says, “quia in *Wafconia*, *Albigensio*, et partibus *Tolosanis*, et aliis locis, ita hæreticorum (quos alii *Catharos*, alii *Publicanos*, alii *Paterinos*, alii aliis nominibus vocant) invaluit damnanda perversitas,” &c. From hence it is evident, that those called *Publicani*

cani

cani by William of Newbury were afterwards called Albigenſes, becauſe they were found in the Albigeois (*in the Albigeſe*), and the parts about Toulouſe. It likewiſe appears that *Cathari* was another name given to them. The tenets of theſe are ſaid to have been nearly the ſame with thoſe aſcribed to the ancient Manichæans. We are told that the foundation of all their errors was a doctrine derived from thoſe Hereticks, that the bodies of men, with all the reſt of the material and viſible univerſe, were formed by the devil, and that into thoſe bodies he put ſome ſpirits, whom, in his rebellion againſt God, he had led away captive, or ſeduced to his ſide, and to redeem whom from that thralldom the *Son* and *Holy Ghoſt* had been afterwards produced by God from himſelf. This induced the Manichæans and the *Cathari* to conclude, that the continuing by propagation the devil's work, human fleſh, was a moſt damnable ſin, and therefore they held marriage inconſiſtent with ſalvation. Thoſe among them who were called *perfect*, either lived in celibacy, or, if married, renounced all carnal uſe of their conſorts. But the others, whom they only termed *believers*, were permitted to marry, and, if married, to remain for ſome time in that ſtate, without renouncing the duties of it; yet under a promiſe that before the end of their lives they would renounce them, and become *perfect*; as they could not otherwiſe be ſaved. And, placing all holineſs in a total abſtraction from the world and carnal pleaſure, they paid no regard to any ſacraments, or external means of ſalvation, but conſidered whatever was viſible and corporeal as unholy and belonging to its author and ruler the devil. With this account of the tenets of the *Cathari*, or *Puritans*, called alſo *Publicans* in thoſe days, what we are told by William of Newbury of the anſwers made by the Germans, who came over into England in Henry the Second's time, upon their examination at Oxford concerning the eucharift, baptiſm, and marriage, ſufficiently agrees; but it ſeems that Gerard, their teacher, did not explain their opinions concerning the Deity, or the formation of the viſible univerſe by the devil; on which points he might probably be more reſerved in his anſwers, as they were the ſecrets and myſteries of the ſect. Nor would the Engliſh biſhops, to whom their inward doctrines were unknown, preſs them ſo cloſely on theſe articles, as thoſe

V. Joh.
Conradi
Pueſilini
Diſſertatio
de Fanati-
cis Sec. xi.
in Italiâ
detectis.
Et ejuſdem
de Fanaticis
Sec. xii. in
Angliâ de-
tectis.

who examined them in France, or in Germany, where, the sect being numerous, their secrets were more divulged. It must be observed, that at the time when the great persecution was raised against the Albigenes in the earldom of Toulouse and in Gascony, though some Cathari were among them, yet a great number of others, who had also separated from the communion of the Roman catholick church, Petro-Bruisiens, Henricians, Waldenses, and Vaudois, had gathered together in those parts, and were therefore called Albigenes. Nothing could be more different from the doctrine of the Cathari than that of all these sects, which was much the same with the creed of the Protestant churches in these days. But, to make them more odious, the worst notions of the Cathari were imputed to them all, and many calumnies added, which were really true of none. Not only their opinions were misrepresented, but their actions were traduced. Yet I will not affirm, that the manners of the Cathari were always pure. St. Bernard, reproaching them with their condemnation of marriage, says justly. "*Tolle de ecclesia honorabile connubium et thorum immaculatum, nonne repleas eam concubinariis, incestuosis, seminifuis, mollibus, masculorum concubitoribus, et omni denique genere immundorum?*" That such disorders might arise among some of the Cathari, from their denying to themselves the proper indulgence of their natural desires in lawful marriage, I make no doubt. So false a notion of purity must necessarily lead to all kinds of impurity. But Bernard ought to have seen, that his argument was as good against the celibacy of the clergy, which Rome established in his days, as against the practice of these Hereticks condemned by him and by Rome. I will only add, that the Cathari, from the best accounts delivered to us of the opinions they held, appear to have differed among themselves not a little in the fundamental article of their faith. For some held two principles, eternal and opposite; others only one, against whom the devil rebelled. The former supposed that the evil principle, whom they called the prince of darkness, in the war he waged against God, whom they called the prince of light, and believed to inhabit in light, as an emanation from his essence, took and carried away with him some part of that light, out of which, joined to darkness, he made the visible world. The latter thought, that God produced all spirits,

spirits, and all matter, from his own substance; but that the devil, having rebelled, and being thrown out of heaven, had formed the visible world from pre-existing matter, to be governed by himself; and had particularly made the bodies of men to be inhabited by the spirits who were partakers of his guilt and had shared in his fall. It would be unnecessary and tedious here to enter into all the niceties of the differences among them on this and other points. The desire of accounting for the hardest question in theology, *the origin of evil*, was the source of all their absurdities; and, in their notions of the means of recovering from the evil which appears in the world, they run into mysticism and fanatick enthusiasm. I will only add, that we are told many persons of quality had come into this sect in the age of which I write.

P. 478, 479. *But before he had received any intelligence of it, or of what had been done to his prejudice by Alexander himself, he had found means, notwithstanding all the vigilance of the government in guarding the ports, to get the pope's mandate, which notified his legantine power to the bishops of his province, and a copy of the bull of legation itself, delivered, by a person unknown, to the bishop of London, while he was officiating at the high altar, on the feast of St. Paul's conversion, in the year eleven hundred and sixty seven.*

There is an unaccountable difference in the date of this mandate with that of the pope's letter to Becket, which contains his commission. The last is dated in October, the former in May. It is certain they both came to him some time before the end of January, in the year 1167; as appears by these words, in the 130th Epistle of the first book of Becket's Letters, "Londoniensis jam recepti litteras (legationis scilicet) vobis omnibus ostendendas." Now it is said in another letter, that the bishop of London received them from Becket the 25th of January, upon the feast of St. Paul. And by many passages in the foregoing letters it appears, that it could not be written later than the beginning of February, in the year 1167. See epist. 129. 135. 163, 164. 165. l. i.

P. 494. *having built there a stone bridge, which was accounted one of the noblest works of that age.*

According to a late writer on the Antiquities of the City of Rouen, this bridge was seventy five French ells in length, and supported by thirteen arches, of which the five middle ones were of a prodigious height, and drew

NOTES TO THE THIRD BOOK OF

the admiration of all who saw them. But they were too high and too narrow. In the year 1502 three arches fell, and in 1533 two more, after which, others beginning to give way, the bridge became impassable; and it being found too expensive to repair it again with stone, a bridge of boats was erected in 1626, which has since been rendered more perfect, and by rising and falling with the tide, opening easily in the middle to let vessels pass through, and being taken to pieces without difficulty when any repairs are wanting, is very convenient, though not so magnificent as that built by Matilda, all the ruins of which are now entirely demolished.

Ibid. When he had acquitted himself of that duty, and seen her body interred, as she had desired it might be, in the Abbey of Bec, &c.

P. 143.

Matthew Paris has delivered to us the following epitaph on this great lady :

*Ortu magna, viro major, sed maxima partu
Hic jacet Henrici Filia, sponsa, parens.*

But he names not the writer. Another, said to have been written by Arnulph bishop of Lisieux, is given by Du Moulin in his History of Normandy.

*Regia Progenies, stirps regia, Caesaris Uxor
Hic est magna brevi clausa Matilda loco.*

Virtutum titulis humani culmen Honoris

Excessit mulier nil muliebris habens,

Septembris decima : regno post regna recepto,

Creditur æternum continuasse diem.

One can hardly think that the two last of these verses were by the same hand as the former, which, as well as the distich transmitted to us by Matthew Paris, are some of the best of that age.

P. 498. William of Malmesbury tells us, that King Henry the First, when Robert the Second, Earl of Flanders, arrogantly demanded of him a pension, or annual subsidy, of three hundred marks, which the Earl's father had received from William Rufus, returned this answer, "that the kings of England were not accustomed to pay tribute to the Flemings;" &c.

Rymer, in the Preface to his *Fœdera*, blames William of Malmesbury for calling that tribute, which was only a payment in consequence of subsidiary treaties. But there

was

was no impropriety in Henry's making the answer reported by that historian, if a renewal of those treaties was imperiously demanded, *quasi pro imperio*, as Malmesbury expresses it. He might be willing to pay it as a subsidy, when occasion should require a stipulation of that nature, though he would not suffer it to be asked or exacted as a *tribute*. Nevertheless the Flemish annals, and other modern histories, are justly censured by Rymers, for speaking of these subsidies as a real tribute paid by several successive kings of England to the earls of Flanders; which is sufficiently disproved by the treaties he has published from our records.

P. 502. *Yet it was believed that he, with Moses, had the angel of the Lord, that is, the holy spirit, going before him in the law, who would always protect him, and not suffer him to have another God, or to prefer either rewards, or person, or cause, to the divine word.*

The word *cause* is remarkable. Becket was so sensible that his *cause* with the king would not bear an examination, that he endeavoured to possess the legate with an opinion, that no regard was to be paid to the merits of *that*, but only to the privilege he laid claim to, of not being questioned on this matter, by virtue of the immunities given to the clergy (as he supposed) by *the divine word*, that is, by the scriptures as interpreted by the pope and the canonists. The Latin original is as follows: "Nominis tamen vestri (virtutum rectius dixerim,) clarescit opinio, ut angelum Domini cum Moise, id est, Spiritum sanctum in lege prævium habeatis, qui custodiat vos semper, et Deum recentem habere non patiat, ut verbo Dei aut munus; aut personam præferatis, aut causam." In like manner he tells the pope in another letter, that, from the tenour of the letters, which he and the king of France had received from his Holiness, he had rather expected the consolation of peace, than the confusion which would arise from the decision of questions between him and the king of England. "A quo magis sperabamus, juxta tenorem mandati vestri ad dominum regem Francorum et ad nos emissi, solatium de consolatione pacis, quam confusionem de questionum decisione inter regem Anglorum et nos."

V. Epist. 8.
T. e. Cod.
Vatic. l. ii.
epist. 18.

Ibidem,
epist. 22.

P. 517. *No regard was paid in Germany to the sentence of excommunication and deposition pronounced against him by Alexander, the summer before.*

V. Essai sur l' Histoire Generale, t. i. p. 293. Fred. Barb. Monsieur Voltaire, in his Essay on General History, praises Alexander the third for his moderation and prudence, because, though he had often *excommunicated* the emperor, he never went so far as to *depose* him. His words are these: "Il est très remarquable, que, dans ces

V. Epist. Tho. Becket, l. ii. epist. 65. 80.

"longues dissensions, le Pape Alexandre III, qui avoit fait souvent cette ceremonie d'excommunier l'empereur, n'alla jamais jusqu' à le déposer. Cette conduite ne prouve t'elle pas non seulement beaucoup de sagesse dans ce Pontiffe, mais une condamnation generale des excès de Gregoire VII?" But that all this is erroneous appears from two letters written at that time by one well apprised of Alexander's proceedings. John of Salisbury wrote thus to the bishop of Poitiers: "Fredericus ille scismaticus insignis, dum in ecclesiam maliciosius et crudelius sævit, factus est ex-AUGUSTUS," &c. And in another letter to one of his friends in England, he says, "Vicarius Petri à Domino constitutus super gentes et super regna, Italos et omnes qui ei (Frederico scilicet) ex causâ imperii et regni, religione iurjurandi tenebantur adstricti, à fidelitate ejus absolvit, et Italiam jam totam à facie furoris et præsentis tantâ felicitate et celeritate excussit, ut in eâ nihil habere videatur, nisi tortores, quos evitat interdum, et angustiarum, quas evitare non potest, jure supplicium. Abstulit ei etiam regiam dignitatem, ipsumque anathemate condemnavit, et inhibuit autoritate Dei, ne vires ullas amodo in bellicis congressionibus habeat, aut de Christiano aliquo victoriam consequatur, aut alicubi quiete et pace gaudeat, donec fructus pœnitentiæ condignos operetur. In quo secutus est exemplum Gregorii septimi, decessoris sui, qui nostrâ ætate Henricum imperatorem, ecclesiæ privilegia convellentem, deponens in concilio Romano similî sententiâ condemnavit." These proofs are decisive; and

V. Epist. T. Becket, l. v. epist. 4.

there is a further confirmation of them from Alexander himself in a letter he wrote some time afterwards to the bishops of Rouen and Nevers, his legates to Henry. Speaking of that prince, he says, "Quod si nec sic resipuerit, personæ suæ, sicut nec Frederico dicto imperatori fecimus, nequaquam parcemus," &c. The word *dicto* expresses, that he held Frederick to be no longer emperor, but only *so called*. Nor was it from any moderation or prudence in

in him, that the sentence of deposition, which he had pronounced, had not so full an effect against this prince, as Gregory the Seventh's had against Henry the Fourth, but merely from his want of power to enforce it as his predecessor had done.

P. 519 *He had written in the same style to the college of cardinals, &c.*

Several letters relating to this affair are strangely misplaced in the printed edition of them from the Vatican manuscript, being there in the fourth book, instead of the second, to which they plainly belong.

See epist. 3.

P. 528. *While these negotiations were depending, the earl of Salisbury was surprised and treacherously murdered, on his return from a pilgrimage, by Guy de Lusignan and others of the same family.*

13, 14, 15,
16, 17, 18,
19, 20, 21,
22. 51.

The abbot of Peterborough ascribes this murder to Geoffrey de Lusignan, Guy's brother; but Roger de Hoveden, who has corrected some mistakes in that author, ascribes it to Guy. From other writers it appears that all the lords of that family were concerned in the murder; but it certainly was committed by the hand of Guy, who fled and went to the Holy Land immediately after the fact. William of Newbury, speaking of the daughter of Amalarick, king of Jerusalem, says; "Nam, tempore fratris regis, voto proprio secundas contraxerat nuptias cum homine peregrino, Guidone scilicet quondam Picavenfi, qui à facie regis Anglorum Henrici secundum de Aquitania iugerat, et regi Ierosolymorum egregie militabat."

V. Benedic.
Abb. p. 443.
vol. ii.
V. Hoveden,
sub ann.
1168.

P. 539. *The articles were, first, that Henry should renew his homage and fealty for Normandy in the accustomed form.*

Some authors say, that the young Prince Henry, in consequence of this treaty, did homage to Louis for Bretagne, having done it before for Normandy. But it appears by the 66th epistle of the second book of Becket's Letters, and by the 268th of John of Salisbury's printed at Paris in 1611, that King Henry himself, not his son, did homage for Normandy; and there could be no reason to demand it for Bretagne of the latter, who had no claim to Bretagne, and was not in possession of Normandy, under which Bretagne was a fief. This duchy had no dependence either upon Anjou or Maine.

Chron.
Norm. &
Gervase.

P. 539. *That he should give up the earldoms of Anjou and Maine, and the fealty of the vassals thereof to Prince Henry, his eldest son; who should pay homage and fealty for them to the king of France, and owe nothing more either to his father or brothers, with respect to these earldoms, than merely that which their merit or nature might require.*

The reason of the latter part of this article I take to be, that, whereas the dukes of Normandy had formerly laid claim to Maine, and those of Aquitaine to some districts belonging to Anjou, the young prince was now to hold these two earldoms without any dependence on either of those duchies, and also free of any claim, which the dukes of Bretagne may have had to any districts therein.

P. 546. *But he replied, "It was true, many of his predecessors were better and greater than he: but every one of them had, in his own time, cut off some things, which raised themselves up against God, though not all. For if they had then entirely eradicated all, he should not be now exposed to this fiery trial, by which being proved, as they had been, and partaking their labour, he might also be found worthy of their praise and reward. Nor, if any one among them had been too cool, or too immoderate in his zeal, was he bound to follow his example, one way or another." He added other arguments to the same purpose, concluding, "that the primitive fathers had suffered martyrdom, because they would not subject the name of Jesus Christ to any other name: nor would he, that he might recover the favour of a man, give up the honour of Christ."*

This answer is so much in Becket's style, that I am inclined to believe it is genuine; because, though none of the letters concerning this meeting report either these words, or those of the king to which they were a reply, yet one of them plainly intimates, that more was said on both sides than is there told. But what the same historians who mention these particulars add about Becket's disgrace with Louis, on account of his behaviour upon this occasion, and the universal outcry against him, so that even the monks themselves entirely condemned and reproached him for it, I think cannot be true; because
the

V. Epist. 8.
l. iv.

V. Quadril.
Gervase.

the monks in what they wrote on this subject to the pope expressed no disapprobation at all of his conduct, but rather approved it, only saying, that *many pressed the archbishop to comply with the king*. And it can scarce be supposed that they would have omitted to mention a circumstance of so much importance as the French king's displeasure, or that Becket himself would have been silent, about it in what he wrote to the pope concerning this V. Ep. 12, conference. Whereas, on the contrary, he seems in that letter to depend entirely upon the protection of Louis, and triumphs in the ascendant which this monarch appeared to him to have gained over Henry. Indeed we are told by the above-mentioned historians, that this disgrace did not continue long; for that, after a few days, Louis repented on a sudden, threw himself at his feet, and begged his pardon. But not to insist on the great improbability of this account, Becket's letter to the pope was certainly written immediately after the conference; and even supposing that the king had been reconciled to him before he wrote it, he would undoubtedly have given that pontiff information of so material an event.

P. 563, 564. *But at the same time he tells the pope, that the king now declared, he did not demand of him any account of his administration as chancellor, nor the money he then had received or stood engaged for, but only what he had received that belonged to the crown since he was made archbishop of Canterbury; for which (he says) it was universally known that he had accounted.*

This, I suppose, led Hoveden into the mistake of saying, that Becket had accounted for all the money with which he was charged: an assertion contradicted by all the other contemporary historians, and (what is of more weight) by the letters of that prelate himself.

P. 569. *Or to the judgment of the Gallican church, or the university of Paris.*

The words in the original are, "paratum esse stare dicto curiæ Domini sui, regis Francorum, vel iudicio ecclesiæ Gallicanæ, aut *scholarium Parisensium*." It may be doubtful whether the term *University* was yet applied to the schools of Paris; but I have used it as conveying the same sense to the reader which that word now

now imports. And this passage shews, that the reputation of those *schools* was very great in those days.

P. 573. *Nay, such was the inhumanity of the Roman civil laws, even under Christian emperors, that in one of Arcadius and Honorius it is called a special act of imperial mercy to grant to the sons of a traitor their lives; and they are declared thereby incapable of any inheritance, not only from their father, but from any other relation, or of receiving any bequest from a stranger, or of attaining to any honours and dignities in the state.* The words here referred to are these: "*Filii vero ejus, quibus vitam Imperatoriâ specialiter lenitate concedimus (paterno enim deberent perire supplicio in quibus paterni, hoc est, hæreditarii criminis exempla metuuntur) à maternâ, vel avitâ, omnium etiam proximorum hæreditate, ac successione, habeantur alieni, testamentis extraneorum nihil capiant, sint perpetuo egentes et pauperes, infamia eos paterna semper comitetur, ad nullos prorsus honores, ad nulla sacramenta perveniant. Sint postremo tales, ut his perpetuâ egestate fordentibus sit et mors solatium et vita supplicium.*" (Codicis l. ix. tit. 8. ad legem Juliam Majestatis, l. v.) Yet even in the same Code of Justinian, from whence I have cited the foregoing passage, an imperial constitution is to be found of the same emperors, containing maxims entirely opposite to those of the former, and agreeable to the justice and lenity of a good government. "*Sancimus ibi esse pœnam ubi et poxia est. Propinquos, notos, familiares procul à calumniâ summovemus, quos reos sceleris societas non facit. Nec enim adfinitas vel amicitia nefarium crimen admittunt. Peccata igitur suos teneant auctores; nec ulterius progrediatur metus, quam reperiat delictum. Hoc singulis quibusque judicibus intimitur.*" (Codicis l. ix. tit. 47. 22. De Pœnis.) But there is a doubt whether this abrogated the former law, or extended to cases of treason. Some of the best civilians assert it did not, but only to other capital crimes. Indeed the laws of treason, or *læsæ majestatis*, made under the emperors, are by much the worst part of the civil law.

P. 576, 577. *The bishop of Norwich, though expressly forbidden by particular orders from the king, published a sentence*

a sentence of excommunication against the earl of Chester and several others, conformably to injunctions laid upon him by Becket, even in the presence of the officers who brought the prohibition.

I make no doubt that this prelate would have been punished for an act so highly contumacious (whatever good reasons may have determined the king to connive at the disobedience of the other prelates to his orders relating to the articles he had sent over), if the bishop of London had not been also involved in the offence of publishing the censures fulminated by Alexander against the earl of Chester; as we find he was by an article added to those above-mentioned, which the reader may see in the appendix to this book. It appears from thence that both these prelates were declared to be *in misericordiâ regis*, at the mercy of the king, for having, in obedience to a mandate from the pope, put the lands of the earl of Chester under an interdict, and published the sentence of excommunication, which the pope had passed against him, with leave of the king's justices, against the statutes of Clarendon. That the bishop of London should concur in such an act is surprising! but his merit to the king in other parts of his conduct atoned for this; and, to avoid an appearance of partiality in a matter of justice, the same pardon was extended to the bishop of Norwich.

P. 593: *Upon the report of the commissioners, Henry turned out at once almost all the sheriffs in the kingdom, and their bailiffs, or deputies, for oppressing his people, &c.*

The words of Benedict, abbot of Peterborough, in his History of the Life of King Henry the Second, are these: “Eodem anno rex tenuit curiam suam in solem-

“nitâ Paschali apud Windeshovres (Windsor) cui festo
 “Paschali interfuerunt Willelmus rex Scotiæ, et David
 “Frater ejus, et fere omnes nobiliores et majores Angliæ,
 “tam episcopi, quam comites et barones. Peractâ igitur
 “solemnitate Paschali, perrexit inde Lundonias, et ibi
 “magnum celebravit concilium de coronatione Henrici filii
 “sui majoris; et de statutis regni sui: et ibidem depo-
 “suit fere omnes vicecomites Angliæ, et ballivos eorum,
 “pro eo quod male tractaverant homines regni sui. Et
 “unusquisque vicecomitum et ballivorum eorum plegios inven-
 “nerunt de se ipsis, quod ad rectum starent et ad adre-
 “sciendum D. regi et hominibus regni quod eis adresciare
 “deberent de prisus suis. Et postea fecit rex omnes ho-

“mines

P. 3. sub
 ann. 1170.

NOTES TO THE THIRD BOOK OF

*“ mines regni sui, scilicet, comites, barones, milites, francofe-
 “ ntes, et etiam villicos, per singulos vicecomitatus ju-
 “ rare, tactis sacro-sanctis evangelis quod verum dice-
 “ rent,” &c.* By this account it seems that the inquisition was made after the parliament held at London, wherein the sheriffs were turned out for the malversation and oppression of which they had been guilty; which supposes that their punishment preceded the enquiry into their guilt. But Gervase of Canterbury relates the facts in their proper order. *“ Rex autem, convocatis optima-
 “ tibus suis, instituit abbates et clericos, comites et milites,
 “ qui circumirent terram, &c. et hæc inquirere debuerunt.
 “ In primis exigent barones errantes vadium et plegium
 “ ab omnibus vicecomitibus,” &c.* And afterwards (when he has given all the articles of the enquiry, which the reader may see in the appendix to this book), *“ Factâ
 “ autem hac inquisitione mirabili omnes jussi sunt ut essent
 “ coram rege in civitate Londoniæ xviii kal. Julii, &c.
 “ Convenerunt interim die statuto, ex mandato reris, ad
 “ Londoniam totius Angliæ episcopi, abbates, comites, ba-
 “ rones, vicecomites, præpositi, aldermanni, cum fidejus-
 “ soribus suis, timentes valde omnes.”* This is not a full description of all the members of the parliament, but only of those who were ordered to appear with their sureties, *cum fidejussoribus suis*, being all such as had exercised some kind of *judicature*. But it appears that the enquiry was ordered in one parliament, and the proceedings upon it carried on in another. The abbot of Peterborough, in the passage before-recited, says, the king held the great council at London, *“ de coronatione Henrici
 “ filii sui majoris, et de statutis regni sui.”* We have no account of any statutes made in that parliament; but from these words one should imagine that some were made. Probably the meeting at Easter, in which the enquiry was ordered, had not been so full and general as this at London. The abbot says afterwards, that the proceedings on this matter proved in the issue detrimental to the nation, *“ quia, post factam inquisitionem, rex reposuit
 “ quosdam vicecomitum illorum iterum in locis suis; et
 “ ipsi post ea multo crudeliores extiterunt quam antea fu-
 “ erunt.”* If this was true in any instances, it may have arisen from the disorder and confusion of the following civil war, in which some of those, who had been turned out from their shrievalties, might, in recompense for services done to the king against the rebels, be restored to

to their offices. But Roger Hoveden, who mentions the turning out of the sheriffs, takes no notice of this circumstance; nor is it mentioned by any other contemporary author.

P. 594. *When he had thus re-established the good order of the state, and made his people the best reparation in his power for what they had suffered by his absence, he proposed to his parliament, which had been summoned to meet him on the feast of St. Barnabas, the affair of his son's coronation.*

In relating these transactions concerning the coronation, Gervase of Canterbury confounds the times, as if many things, which were done at considerable intervals, had happened on the same day. He also seems to suppose, that the members of this parliament were quite unapprised of the intention of Henry to cause his son to be crowned, till he mentioned it to them in form: but there are many clear indications in the letters to and from Becket, that this design was made publick before he came from France. No notice is taken by Gervase of the sheriffs being turned out; but, on the contrary, one would think, from what he says on the subject, that all offenders convicted on this extensive inquisition had gone off unpunished, in which he is contradicted by Benedictus Abbas, and by Roger de Hoveden.

P. 620. *Henry was now returned into Normandy, where he was seized with an illness so violent, that thinking himself in danger he made his will, &c.*

It was about the feast of St Laurentius (the 10th of August) that Henry fell sick of this illness, to which Rapin Thoyras ascribes his reconciliation with Becket, which was made on the 22d of July in the same year. So inaccurate is that author in the account he gives of this reign.

P. 638. *That he was very unfortunate to have maintained so many cowardly and ungrateful men in his court, none of whom would revenge him of the injuries he sustained from one turbulent priest.*

These are a translation of the words of King Henry, as reported in the *Quadrilogus* and Gervase of Canterbury. But Edward Grime (or Grim) in his manuscript contemporary history of this event, preserved in the library of the Royal Society at London, reports them thus: “*In-ertes ac miseros homines enutriui et erexi in regno meo, qui nec fidem ferunt domino suo, quem à plebeio quodam clerico tam probrose patiuntur illudi.*”

MSS. fol. 36.

P. 641.

P. 641. *The words be repeated there, as spoken by Henry, even admitting that they were given without any exaggeration, would not authorise the construction he now put upon them.*

He there says only that Henry had promised in general
 V. Epist. 45. terms to redress the wrong that had been done to the church of
 l. v. Canterbury, and make such an answer to those who had be-
 prayed the archbishop and him, as the deserts of traitors
 required. But these words rather reserved to Henry him-
 self the sole right and power of doing him justice with
 regard to that affair. Nevertheless the earl of Blois, in
 a letter he wrote to the pope on the subject of Becket's
 death, affirmed to his Holiness, "*that the king had, in*
his bearing, upon the day of his reconciliation with
Becket, granted him free and full power to pass sen-
tence upon the bishops who had presumed to crown the
young king, at his own and the pope's discretion." This
 testimony is strong : but how can one account for Bec-
 ket's silence upon it, in his letter to the pope, wherein
 he relates the particulars of what had passed on that day ?
 He says there, that the conversation he had with the king
 concerning that matter, and of which he gives a very par-
 ticular detail to his Holiness, was apart from all the com-
 V. Epist. 45. pany. "*Et habitis paucis sermonibus, solis nobis præ-*
 l. v. Append. "*sentibus cum domino Senonensi, nos, illo divertente, stu-*
pentibus universis, traxit in partem." The earl of
 Blois therefore could not possibly have heard this con-
 versation ; nor does the archbishop take notice to Alex-
 ander of any other on this subject. I should therefore
 suppose, that the earl, who stood at a distance, seeing
 Becket throw himself at the feet of the king, and being
 afterwards told by Henry, that this action was the effect
 of that prelate's gratitude for the promise he had made,
 of doing justice to him and his church concerning the
 affair of the young king's coronation, gave this sense to
 the words, and repeated them upon memory, not very
 accurately ; which might naturally happen at such a dis-
 tance of time, and when his mind was inflamed with anger
 upon the murder of Becket. For, if Henry had really
 spoken these words, his rage against Becket for having
 done what he had given him leave to do would be quite
 unaccountable, as well as that prelate's continued silence
 upon it through his whole correspondence.

*End of the Notes to the THIRD BOOK of the History of
 the Life of King HENRY the Second.*

A P P E N D I X

TO THE

S E C O N D B O O K

OF THE

History of the Life of King Henry the Second.

VOLUME II.

Nº I.

Carta Libertatum Angliæ Regis Henrici II.

From the Red Book of the Exchequer.

HENRICUS, Dei gratiâ, Rex Angliæ, Dux Nor-
manniæ et Aquitaniæ, Comes Andegaviæ, ba-
ronibus et fidelibus suis, Francis et Anglicis, This is re-ferred to in p. 16. vol. II.
Salutem.

Sciatis me, ad honorem Dei et Sanctæ Ecclesiæ, et pro communi emendatione totius regni mei, concessisse et reddidisse, et præsentî cartâ meâ confirmasse, Deo et Sanctæ Ecclesiæ, et omnibus comitibus et baronibus, et omnibus hominibus meis, omnes consuetudines, quas rex Henricus, avus meus, eis dedit et concessit. Similiter etiam omnes malas consuetudines, quas ipse delevit et remisit, ego remitto et deleri concedo, pro me, et hæredibus meis.

Quare volo et firmiter præcipio, quod Sancta Ecclesia, et omnes comites et barones, et omnes mei homines, omnes illas consuetudines, et donationes, et libertates, et liberas consuetudines, habeant, et teneant libere et quiete, bene et in pace, et integre, de me et hæredibus meis, sibi et hæredibus suis, adeo libere, et quiete, et plenarie, in omnibus, sicut rex Henricus, avus meus, eis dedit et concessit, et cartâ suâ confirmavit.

Teste Ricardo de Luci.

No. II.

Nº II.

*Petri Blessensis Epist.**Ep. LXVI. Ad Gualter Archiepiscopum Panormitanum.*

This is referred to in
p. 17. 154.
156. 157.
158. vol. ii.

BENEDICTUS Dominus Deus, &c. &c.
 Quod autem à me cum omni instantia postulatis, ut formam et mores domini regis Angliæ vobis sub certa descriptione transmittam, meas quidem facultates excedit: ad hoc enim satis insufficiens videretur Mantuani vena ingenii. Ego tamen quod scio vobis sine inaidia et detractiōe communico. De David legitur, ad commendationem decoris ejus, quoniam rufus erat. Vos autem dominum regem subrufum hæcenus extitisse noveritis, nisi quia colorem hunc venerabilis senectus, et superveniens canities aliquantulum alteravit. Statura ejus mediocris est, ut et inter parvos magnus appareat, nec inter majores minimus videatur. Caput ejus sphaericum est, tanquam sapientiæ magnæ fedes, et alti consilii speciale sacrarium. Ea vero est capitis quantitas, ut collo et toti corpori proportionali moderatione respondeat. Oculi ejus orbiculati sunt, dum pacati est animi, columbini et simplices: sed in ira et turbatione cordis quasi scintillantes ignem et in impetu fulminantes. Cæsaries ejus damna calvitii non veretur, superveniente tamen artificii capillorum tonsura. Leonina facies quasi in quadrangulum se dilatat. Eminentia naris ad totius corporis venustatem naturali est moderatione propensa. Arcuati pedes, equestres tibiarum, thorax extensior, lacerti pugiles virum fortem, agilem, et audacem denunciant: in quodam tamen articulo pedis ejus pars unguis innascitur carni, atque in contumeliam totius pedis vehementer increfcit. Manus ejus quadam grossitie sua hominis incuriam protestantur. Earum enim cultum prorsus negligit; nec unquam, nisi aves deferat, utitur chyrothecis. Singulis diebus in missis, in consiliis, et aliis, publicis actionibus regni. Semper à mane usque ad vesperam stat in pedes. Et licet tibias habeat frequenti percussione calcitrantium equorum enormiter vulneratas et lividas, nisi tamen equitet, vel comedat, nunquam sedet. Una die, si opus fuerit, quatuor aut quinque diætæ excurrit, et sic, inimicorum machinamenta præveniens, artes eorum frequenter inopinata subitane deludit.

deludit. Ocreis sine plica, pileis sine fastu, et vestibus utitur expeditis. Vehemens amatur nemorum, dum cessat à præliis, in avibus et canibus se exercet. Caro siquidem ejus de mole pinguedinis enormiter onerasset, nisi quia ventris insolentiam jejuniis et exercitio domat, atque in ascendendo equum, et in excurrando, levitatem adolescentiæ fervans potentissimos ad laborem singulis fere diebus itinerrando fatigat. Non enim, sicut alii reges, in palatio suo jacet, sed per provincias currens explorat facta omnium, illos potissime judicans, quos constituit judices aliorum. Nemo est argutior in consiliis, in eloquio torrentior, securior in periculis, in prosperis timidior, constantior in adversis. Quem semel dilexit, vix dediligit: Quem vero semel exosum habuit, vix in gratiam familiaritatis admittit. Semper in manibus ejus sunt arcus, enses, venabula, et sagittæ; nisi sit in consiliis, aut in libris. Quoties enim potest a curis et solitudinibus respirare, secreta se occupat lectione, aut in cuneo clericorum aliquem nodum quæstionis laborat evolvere. Nam cum rex vester bene literas noverit, rex noster longe literatior est. Ego enim in litterali scientia facultates utriusque cognovi. Scitis, quod dominus rex Siciliæ per annum discipulus meus fuit, et qui à vobis verificatoriæ atque litteratoriæ artis primitias habuerat, per industriam et solitudinem meam beneficium scientiæ plenioris obtinuit. Quam cito autem egressus sum regnum, ipse libris abjectis ad otium se contulit palatinum.

Verumtamen apud dominum regem Anglorum, quotidiana ejus schola est literatissimorum conversatio jugis, et discussio quæstionum. Nullus rege nostro est honestior in loquendo, in comedendo urbanior, moderatior in bibendo. Nullus magnificentior in donis, nullus munificentior in eleemosynis: ideoque quasi unguentum effusum est nomen ejus, et eleemosynas illius enarrat omnis Ecclesia Sanctorum. Rex noster pacificus, victoriosus in bellis, gloriosus in pace: super omnia desiderabilia hujus mundi zelatur, et procurat pacem populi sui. Ad pacem populi spectat immensitas illa pecuniarum, quam donat, quam recipit, quam congregat, quam dispergit. In muris, in propugnaculis, in munitionibus, in fossatis, in clausuris ferarum et piscium, et in palatiorum ædificiis nullus subtilior, nullusque magnificentior invenitur. Pater ejus, potentissimus et nobilissimus comes, fines suos amplissime dilatavit: sed iste patris facultatibus superaddens in fortitudine manus suæ ducatum Normanniæ, ducatum Aquitaniæ, ducatum Britanniæ, regnum Angliæ, regnum Scotiæ, regnum Hyberniæ, regnum Walliæ, paternæ magnificentiæ

nificentiae titulos inestimabiliter ampliavit. Nullus mansuetior est afflictis, nullus affabilior pauperibus, nullus importabilior est superbis : quadam enim divinitatis imagine semper studuit opprimere fastuosos, oppressos erigere, et adversus superbiae tumorem continuas persecutiones et exitiales molestias suscitare. Cum autem juxta regni consuetudinem in electionibus faciendis potissimas et potentissimas habeat partes, habuit tamen semper manus ab omni venalitate innoxias et immunes. Has et alias tam animi quam corporis dotes, quibus ipsum natura egregie præ cæteris insignivit, tango summotenus, non describo : meam enim profiteor insufficientiam, crederemque sub tanta sudare materia Tullium, aut Maronem. Illud sane tantillum, quod de forma et moribus ejus, ad instantiam vestram, breviter delibavi, mihi temeritati à pluribus adferibetur : videbor enim, aut onus importabile præsumpsisse, aut plurimum de magnificentia tanti viri per invidentiam recidisse. Ego tamen vestrae serviens caritati, quod possum facio, et quod scio vestrae postulationi promptissima voluntate communico, atque inter cæteros magnificos viros, qui de laudibus domini mei scribunt, ego cum paupere vidua minutum devotionis gazophylacium mitto. Quod autem de morte beati martyris quæritis, in verbo domini, et in ordine diaconi vobis dico, me nullo modo habere in conscientia, ipsum hujus rei culpabilem existisse : hujusque fidem plenissimam vobis facient dominus Theodinus Portuensis episcopus, et dominus Albartus Cancellarius, qui propter hoc in partibus nostris legatione fungentes exploraverunt, et innocentiam viri cognoverunt, atque sub umbra illius hoc a quibusdam attentatum fuisse, totamque hanc iniquitatem à sanctuario processisse. Accepta siquidem ab eis canonica purgatione illius, illi de mandato summi pontificis publice sententiaverunt, eum ab hoc crimine coram Deo et hominibus esse innoxium, et in quosdam magnates, quorum malitiam in hac parte manifeste convicerant, notam infamiae retorserunt. Illud quoque noveritis, dominum regem gloriosum martyrem in omnibus angustiis suis patronum habere præcipuum. Eadem siquidem die, qua primo tumultum martyris visitavit, regem Scotiae, persecutorem et impugnatorem fortissimum, captum vinculis carcelaribus mancipavit. Continuatoque deinceps favore successuum ope martyris de universis hostibus gloriosissime triumphavit. Sciatis igitur certissime, quod caritatem illam, qua se olim rex et martyr mutuo dilexerunt, neque mors neque gladius abolevit : fortis

tis enim est dilectio, ut mors : et cum omnia transeant, caritas nunquam excidit. Hæc est porta speciosa, quæ in subversione Hierusalem integra et intacta permansit : cumque omnia evacuentur in morte, dilectio in morte non moritur, cujus fortitudini mors succumbit. Regnum quidem Angliæ, quod adversus regem Stephanum armis strenuissimum sudoribus obtinuerat bellicis, licet adolescentulus et contemptus, filii ejus, consilio et auxilio regum et principum circumjacentium, gravi seditione turbaverant. Ipse autem destitutus suis, et ab extraneis impugnatus, illo aspirante, in cujus virtute unus fugat decem millia, prævaluit universis, deditque in manus ejus hostes suos Dominus, ad alligandos reges eorum in compedibus, et nobiles eorum in manicis ferreis. Ille, qui convertit corda filiorum ad patrem, ipsos in affectione filiali nutriendum patris in tempora longa stabiliat, et faciat pacem. Scio enim, quod si bella iterum suscitaverint in parentem, succidet eos dominus. Nam Dei judicio et lege fatali fancitum est, ut quicumque de consanguinitate illius bellis ipsum impugnare præsumperit, non dimidiet dies suos. Hoc autem in libro experientiæ jam de multis legimus, et fide oculata cognovimus.

Nº III.

Harley, part 215. fol. 2. 6---36.

NOTUM sit omnibus tam præsentibus quam futuris, quod hoc modo facta pax inter Lodowicum regem Francie, et regem Anglie Henricum. Rex Lodowicus reddidit regi Anglie omnia jura, et tenementa Henrici regis avi sui, que tenebat die, qua fuit vivus ac mortuus, plene et integre; excepto Wilcastino. Et de Wilcastino remansit regi Anglie feodum archiepiscopi Rotomag', et feodum comitis ligicum de feodo Britollii, et feodum comitis Ebr'. Et totum remanens Wilcastini regi Francie; hoc modo, quod ipse illud remanens dedit, et concessit maritagium cum filia sua filio regis Anglie habendum. Et cum inde seiscindum ab assumptione beate Marie proxima post pacem factam, in tres annos, et si infra hunc terminum filia regis Francie filio regis Anglie desponsata fuerit, assensu et consensu Sancte Ecclesie, tunc erit rex Anglie seysitus de toto Wilcastino, et de Castellis Wilcastini, ad opus filii

This is referred to in p. 124 vol. ii.

filii sui. Et si filia regis Francie infra hunc terminum obierit, Castella et Wilcassinum redibunt ad manum regis Francie; exceptas tribus feodis, que semper remanebunt regi Anglie soluta et quieta. Et ista conventionem, quod Castella remanebunt in custodia militum Templi, usque ad prædictum terminum: et habebunt redditus ad Castella custodienda, quæ rex Francie in dominio habebat. Et interim, rex Francie habebit inde justiciam, et homagia, et servitium. Et Gocelinus Crispinus, et Goellius de Vaudemonte reversi sunt in homagia regis Francie, de eo quod habent in Wilcassino, et debent habere de ipso. Et si rex Francie habuerit querelam versus eos, que sit ad justiciam corporis, vel membrorum, sive exheredacionem, sive magnum gravamen pecunie, per consilium regis Anglie deducetur. Per istam conventionem Castellum Stipinnei prosterneatur, infra festum Sancti Johannis. Comes Ebr' Simon reversus est in homagium regis Francie; et servitium quiete in hominibus et castellis suis, et castella sua ei quieta remanebunt; sicut ceteri barones Francie castella sua quieta habent. Et rex solvi, et quietos clamavit homines ejusdem comitis omnes, à juramento quod ei fecerunt: et ipsum comitem similiter absolvit, de eo quod ad regem Francie pertinet. Et idem comes Ebr' habebit omnia jura sua de foresta Aquiline, sicut jurata fuerunt per servientes regis Francie, et ipsius comitis. Sed si inter eos orta fuerit querela, per juramenta hominum et regis et comitis, qui hoc juraverunt, ex precepto regis, et sine mala voluntate ejus recognitum erit. Et de domo Sancti Leodegarii, si comes eum requisierit, de custodia ejusdem domus rex ei rectum tenebit. Præterea rex Francie reddidit regi Anglie omnia jura et tenementa comitis Piçavensis, excepta Tolosa; hoc modo, quod rex Anglie concessit de Tolosa trevias, usque die primo Pentecost post pacem, in unum annum, pro amore regis Francie, comiti Sancti Egidii; salvo honore suo, sine malo ingenio, et sine sua et suorum heredum exheredacione. Et quicquid rex Anglie habebant de honore Tolose, et Cadurco et Cadurcino, ea die qua pax facta fuit, eidem regi Anglie remanebit; et si comes Sancti Egidii infra hunc terminum regi Anglie, vel suis hominibus, de predicto honore Tolose, vel Cadurci, forisfecerit, et ad marchiam in termino convenienti non emendaverit, rex Francie inde ulterius non intromittet. Et si comes de Bargelim' et Trencavel' et ceteri homines regis Anglie illius patrie, noluerunt in trewis istis esse, et gwerram fecerint comiti Sancti Egidii, rex Anglie

APPENDIX TO THE SECOND BOOK.

197

Anglie non juvabit eos infra hunc terminum contraitam convencionem.

Concedo et confirmo hiis testibus: Petro Parisiac', Hugone Suesionen', Roberto Ebroic', Ernaldo Exc', Philippo Baiocen', Rogero Agienfi, Hugone Dunelm' Episcopo, Thoma Cancellar', Comite Flandren', Teodorico Comite, Henrico Comite Suesionen', Comite Belli Montis, Teodor' Wilerianno, Willelmo Pavet, Magistro Templi et Fratribus, Otton'. de Sancto Ludonir', Gilberto de Laci, Ricardo de Hasting', Petro Episcopo, Roberto de Piro, Willelmo fratre regis Anglie, Comite Millet'ino, Ricardo de Humet, Jordano Taxo,

Nº IV.

Judicia Civitatis Lundoniæ, p. 71. Wilkins Leges Anglo Saxonicæ.

ET si mercator tamen sit, qui ter trans altum mare per facultates proprias abeat, ille postea jure Thani sit dignus. This refers to p. 184. vol. ii.

Nº V.

Madox's History of the Exchequer, p. 174. ch. vii. note e.

JOHANNES Dei gratia, &c. Sciatis nos concessisse omnibus Judæis Angliæ et Normanniæ libere et *honorifice* habere residentiam in terra nostra, et omnia illa de nobis tenenda quæ tenuerunt de rege H. avo patris nostri, et omnia illa quæ modo rationabiliter tenent, in terris, feodis, et vadiis, et akatis suis, et quod habeant omnes libertates et consuetudines suas, sicut eas habuerunt tempore prædicti regis H. avi patris nostri, melius et quietius et *honorabilius*. Et si querela orta fuerit inter Christianum et Judæum, ille qui alium appellaverit, ad querelam suam dirationandam habeat testes, scilicet legitimum Christianum et legitimum Judæum. Et si Judæus de querela sua breve habuerit, breve suum erit ei testis. Et si Christianus habuerit querelam adversus Judæum, sit judicata per pares Judæi. Et cum Judæus obierit, non detineatur corpus suum super terram, sed habeat hæres suus pecuniam suam et debita sua, ita quod inde non disturbetur, si habuerit hæredem qui pro ipso respondeat, et rectum faciat de debitis suis et de forisfacto suo. Et liceat Judæis omnia que eis

APPENDIX TO THE SECOND BOOK.

apportata fuerint sine occasione accipere et emere, exceptis illis quæ de ecclesia sunt et panno sanguinolento. Et si Judæus ab aliquo appellatus fuerit sine teste, de illo appellatu erit quietus solo sacramento suo super librum suum. Et de appellatu illarum rerum quæ ad personam nostram pertinent similiter quietus et solo sacramento suo super rotulum suum. Et si inter Christianum et Judæum fuerit dissensio de accommodatione alicujus pecuniæ, Judæus probabit cattallum suum et Christianus lucrum. Et liceat Judæo quiete vendere vadum suum, postquam certus erit eam illud unum annum integrum et unum diem tenuisse. Et Judæi non intrabunt in placitum nisi coram nobis, vel coram illis qui turre nostras custodierint, in quorum ballivis Judæi manserint. Et ubicunque Judæi fuerint, liceat eis ire quocunque voluerint cum omnibus cattallis eorum sicut res nostræ propriæ, et nulli liceat eos retinere neque hoc eis prohibere. Et præcipimus quod ipsi quieti sint per totam Angliam et Normanniam de omnibus consuetudinibus, et theloniis, et modulatione vini, sicut nostrum proprium cattallum. Et mandamus vobis et præcipimus, quod eos custodiatis, et defendatis, et manuteneatis. Et prohibemus ne quis contra cartam istam de hiis supradictis eos in placitum ponat, super forisfacturam nostram, *sicut carta regis H. patris nostri rationabiliter testatur.* Testibus Gaufrido filio Petri Comite Essexiæ, Willielmo Marescallo Comite de Penbroc, Henrico de Bohun Comite de Hereford, Roberto de Turnham, Willielmo Briwer, &c. Datum per manum S. Wellensis Archidiaconi apud Merleberg, decimo die Aprilis, anno regni nostri secundo.

Rot. Cart. 2. Joh. n. 49. titulo Carta Judæorum Angliæ.

Nº VI.

Charta Regis Willielmi Conquest. de legibus boni Regis Edwardi Conf. stabilendis; facta in vis. ante ann. ejus 4. Domini nostri 1070, precibus Willielmi London. Episcopi, qui dicto anno obiit.

This and the two following charters of Hen. I. and Hen. II. are referred to in p. 337. vol. ii.

WILLIELMUS Rex salutatur Willielmum Episcopum, et Godfridum Portegressum, et omnem Burghware, infra London. Franc. et Angl.

APPENDIX TO THE SECOND BOOK.

199

amicabiliter. *Et vobis notum facio, quod ego volo quod vos sitis omni lege illâ digni quâ fuistis Edwardi diebus regis. Et volo quod omnis puer sit patrie sui hæres post diem patris sui*.* Et ego nolo pati, quod aliquis homo aliquam injuriam vobis inferat. Deus vos salvet.

Nº VII.

Wilkins Leges Anglo-Saxon, p. 235.

HENRICUS Dei gratia rex Angliæ, Archiepiscopo Cantuariæ, et Episcopis, et Abbatibus, et Comitibus, et Baronibus, et Justitiariis, et Vicecomitibus, et omnibus fidelibus suis Francis et Anglicis totius Angliæ, Salutem. Sciatis me concessisse civibus meis *London* tenend' *Middlesex* ad firmam pro ccc. libr' ad compotum ipsius et hæredibus suis, de me et hæredibus meis, ita quod ipsi cives ponent vicecom' qualem voluerint de seipsis et justitiar' qualem voluerint de seipsis ad custodiend' placita coronæ meæ et eadem placitanda, et nullus alius erit justitiarius super ipsos homines *London*, et cives non placitabunt extra muros civitatis pro nullo placito, et sint quieti de *eschot* et de *danegildo* et de *murdro*, et nullus eorum *faciat bellum* †. Et si quis civium de placitis coronæ implacitatus fuerit per sacramentum quod judicatum fuerit in civitate, se distracionet homo *London*, et intra muros civitatis nullus hospitetur, neque de mea familia, neque de alia, vi al. cui hospitium liberetur. Et omnes homines *London* sint quieti et liberi, et omnes res eorum per totam Angliam et per portus maris de *thelonio* et *passagio* et *lestagio* (*lastagio*,) et omnibus aliis consuetudinibus; et ecclesiæ et barones, et cives teneant et habeant bene et in pace focnas suas cum omnibus consuetudinibus, ita quod hospites, qui in focis suis hospitantur, non dent consuetudines suas, nisi illi cujus focca fuerit vel ministro suo quem ibi sibi posuerit. Et homo Londoniarum non judicetur in misericordia pecuniæ, nisi

* By the clauses marked in Italicks I understand that the benefit of all the laws of King Edward, or those they enjoyed in his time, was confirmed to the magistrates and citizens of London, and the right of inheritance to their children, so as not to be forfeited by any offences of the fathers. They are strangely translated by Dr. Brady.

† This means exemption from the Norman trial by *Duel*.

APPENDIX TO THE SECOND BOOK.

in sua Were, scilicet ad c solid. Dico de placito quod ad pecuniam pertineat. Et amplius non sit *miskenninga* in *buſſenge*, neque in *folkesmote*, neque in aliis placitis intra civitatem. Et *buſſing* ſedeat ſemel in ebdomada, videlicet, die Lunæ : et terras ſuas, et *wardemotum*, et debita civibus meis habere faciam intra civitatem, et extra. Et de terris de quibus ad me clamaverint rectum eis tenebo lege civitatis. Et ſi quis *thelonium* vel conſuetudinem à civibus *London* ceperit, cives *London* capiant de burgo, vel de villa, ubi *thelonium* vel conſuetudo capta fuit, quantum homo *London* pro *thelonio* dedit, et proinde de dampno ceperit. Et omnes debitores, qui civibus debita debent, eis reddant, vel in *London* ſe diſrationent quod non debent. Quod ſi reddere noluerint, neque ad diſrationandum venire, tunc cives quibus debita ſua debent capiant intra civitatem namia ſua, vel de comitatu in quo manet qui debitum debet. Et cives habeant fugationes ſuas ad fugandum, ſicut melius et plenius habuerunt antecellores eorum, ſcilicet *Ciltre*, et *Midleſex*, et *Sureie*. Teſte Epilcopo Winton', Rob. fil' Richer, et Hug. Bigot, et Alver' de Toneis et Willielmo Albini, et Huberto Regis Camerar' et Willielmo de Montfichet, et Hagulfo de Tani, et Joh' Delet, et Rob. fil. Siwa.

Dat apud Weſtm'.

N. B. I have corrected ſome words of the tranſcript of this Charter as it is given by Wilkins in his Anglo Saxon Laws, from the various readings in his notes; and in ſome places I have altered the ſtops which he has put to it, or inſerted a copulative, in order to make a better and clearer ſenſe. Some paſſages ſeem ſtill to want a further correction.

Nº VIII.

Ibid. p. 319.

Carta Libertatum Regis Henrici ſecundi, Londonienſibus conceſſarum.

HENRICUS Dei gratia, &c. Archiepiſcopis, Epilcopis, Abbatibus, Baronibus, Juſtitiiſ, Vicecomitiſ, Miniſtris, et omnibus fidelibus ſuis, Francis et Angliſ, Salutem.

Sciatis me confirmaffe civibus meis *London*. quod nullus eorum placitet extra muros civitatis *London*. de ullo placito præter placita de tenuris exterioribus, exceptis meis monetariis, et miniſtris meis. Con-

Concessi etiam eis quietantiam murdri infra urbem et portlocna : et quod nullus faciet bellum : et quod de placitis ad coronam se possunt distrationare secundum antiquam consuetudinem civitatis : et quod intra muros nemo capiat hospitium per vim, vel per liberationem marescalli.

Hoc etiam eis concessi, quod omnes cives *Londoniarum* sint quieti de thelonio et lestagio per totam Angliam, et per portum maris : et quod nullus de materia pecuniæ judicetur, nisi secundum legem civitatis, quam habuerunt tempore Henrici avi mei : et quod in civitate in nullo placito sit *miskeninga* : et quod *bustingus* semel tantum in hebdomada teneatur : et quod terras suas, et tenuras, et vadimonia, et debita omnia iuste habeant, quicunque eis debeat ; et de terris suis et tenuris, quæ infra urbem sunt, rectum eis teneatur secundum legem civitatis, et de omnibus debitis suis quæ accommodata fuerint apud *London*. et de vadimoniis ibidem factis, placita apud *London*. teneantur. Et si quis in tota Anglia theloneum vel consuetudinem ab *London*. ceperit, postquam ipse a recto defece- rit, vicecomes *London*. narium inde apud *London*. capiat. Concedo etiam eis, quod habeant fugationes suas, ubicunque eas habuerunt tempore regis Henrici, avi mei.

Insuper etiam ad emendationem civitatis eis concessi, quod sint quieti de Brud toll, et de Childwyte, et de Yarasgive, et de Scotale ; ita quod vicecomes meus *London*. vel aliquis alius Ballivus Scotale non faciat.

Has prædictas consuetudines eis concedo, et omnes alias libertates quas habuerunt tempore Henrici regis, avi mei.

Quare volo et firmiter præcipio, quod ipsi et hæredes eorum hæc prædicta omnia hæreditarie habeant et teneant de me et hæredibus meis. Hiis testibus, Archiepiscopo Cantuariæ, Episcopo *London*.

N^o IX.

*Madox's History of the Exchequer, p. 276. ch. xi.
note g.*

This is re-
ferred to in
p. 341. vol.
II.

JOHANNES Dei gratia, &c. Sciatis nos concessisse, et presenti carta confirmasse, burgensibus nostris de Dunewichge quod burgum Dunewichge sit liberum burgum nostrum; et habeat soccam, et saccam, et toll, et theam, et infangentief; et quod ipsi per totam terram nostram quieti sint de thelonio, et lestagio, et passagio, et pontagio, et stallagio, et de leue, et de danegeld, et de ewagio, de wrec et lagan, et de omnibus aliis consuetudinibus; salva libertate civitatis Londoniæ; et quod ipsi rectam et solitam firmam suam per manum suam reddant ad scaccarium nostrum; et quod nullam sectam faciant comitatum vel hundredorum, nisi coram iusticiariis nostris; et cum summōni fuerint esse coram iusticiariis, mittant pro se xii legales homines de burgo suo, qui sint pro eis omnibus; et si forte amercari debuerint, per sex probos homines de burgo suo, et per sex probos homines extra burgum amercientur. Concessimus etiam eis, quod filios et filias suas possint libere ubi voluerint in terra nostra maritare, et viduas similiter per consilium amicorum suorum; et perquisitiones suas de terris et edificiis in villa sua possint dare aut vendere, aut facere inde quod voluerint et quando voluerint. Concessimus etiam eis Hanfam et Gildam mercatoriam, sicut habere consueverunt. Quare volumus et firmiter præcipimus, quod prædicti bargenses nostri prænominaſas libertates et liberas consuetudines habeant et teneant, libere pacifice et integre, sine omni impedimento.

T. E. Elyensi Episcopo. Willielmo Marefcallo, &c.
Data per manum H. Cantuariensis Archiepiscopi, Cancellarii nostri, apud Rupem Aurivallis xxix die Junii anno r. n. primo.

Rot. Cart. 1. Joh. p. 2. n. 164.

No.

N^o X.

*Royal. 4. l. xi. Master Wace writes thus concerning
the Fleet of William the Conqueror. Fol. 17. b.*

NE vos voil mie metre en letre,
Ne io ne men voil entremetre :
Quels barons et quanz cheyaliers
Quanz vavafors et quanz soldoiers
Out li duc en sa compaignie,
Quant il out prist t^{out} son payie.
Mais io oi dire à mon pere,
Bien, men souvient, mais vaflet ere,
Que sept cenx nés, quatre moins, furent
Quant de Saint Valeri s'esmurent,
Que nés, que batels, que esqueis,
A porter armes et herneis.
Et io ai en escrit trové,
(Ne fais dire s'est verité :)
Que il y out treis mil nés
Qui porterent voiles et tres.
A tantes nés pout lon savoir :
Que mult i pout grant gent avoir.

Speaking of Taillefer, he says,

Devant le duc aloit chantant
De Karlemaigne, et de Rollant
D'Olivier, et del vassals
Qui moururent en Roncevals,

A P P E N -

A P P E N D I X

TO THE

T H I R D B O O K

O F T H E

History of the Life of King Henry the Second.

V O L U M E II.

N^o I.

*Extract from the Remonstrance of the Parliament
of Paris to the King of France, of the 9th of
April 1753.*

This refers
to the first
page of
Book iii.

DES Ecclesiastiques redoublent leurs efforts pour affermir un systeme d'indépendance, dont les fondemens ont été posés il y a près de mille ans, dont les principes ont été liés, développés, et suivis, de siècle en siècle, dans la conduite de plusieurs ministres de l'église; et dont les effets inevitables, sans la vigilance et la fermeté des magistrats, seroient l'abus le plus enorme de votre auguste nom, ainsi que de la religion, l'aneantissement du bon ordre et du repos public, des juridictions réglées, des loix, de votre souveraineté même, et, par consequent, de l'état entier.

N^o II.

Constitutions of Clarendon, from the Cottonian Manuscript of Becket's Life and Epistles, which is probably the most ancient and correct Copy of those Statutes.

MS. Cotton. Claud. B. fol. 26.

This refers
to book iii.
page 281.
and 428.

ANNO ab Incarnatione Domini millesimo centesimo sexagesimo quarto, papatus Alexandri anno quarto, illustrissimi regis Anglorum Henrici II. anno decimo, in presentia ejusdem regis, facta est ista recordatio vel recognitio

natio cujusdam partis consuetudinum, et libertatum, et dignitatum antecessorum suorum, videlicet regis Henrici, avi sui, et aliorum, quæ observari et teneri debent in regno. Et propter dissensiones et discordias, quæ emerferant inter clerum et justicias domini regis, et barones regni, de consuetudinibus et dignitatibus regni, facta est ista recognitio coram archiepiscopis et episcopis et clero, et comitibus et baronibus et proceribus regni. Et easdem consuetudines recognitas per archiepiscopos et episcopos, et comites et barones, et per nobiliores et antiquiores regni, Thomas Cantuariensis archiepiscopus et Rogerus Eboracensis archiepiscopus, et Gilbertus Londoniensis episcopus, et Henricus Wintoniensis episcopus, et Nigellus Eliensis episcopus, et Wilhelmus Norvicensis episcopus, et Robertus Lincolnensis episcopus, et Hilarius Cicestrensis episcopus, et Joselinus Sarisberienensis episcopus, et Richardus Cestrensis episcopus, et Bartholomeus Exoniensis episcopus, et Robertus Herefordensis episcopus, et David Menevensis episcopus, et Rogerus Wigornensis electus, concesserunt, et in verbo veritatis viva voce firmiter promiserunt, tenendas et observandas domino regi et heredibus suis, bona fide, et absque malo ingenio, presentibus istis: Roberto comite Leghecestriae, Reginaldo comite Cornubie, Conano comite Britannie, Johanne comite de Augo, Rogerio comite de Clara, comite Gaufrido de Mandevilla, Hugone comite Cestrie, Wilhelmo comite de Arundel, comite Patricio, Wilhelmo comite de Ferrariis, Richardo de Luci, Reginaldo de Sancto Walerico, Rogerio Bigod, Reginaldo de Warenis, Rogerio de Aquila, Wilhelmo de Braosia, Richardo de Camvilla, Nigello de Mobrai, Simone de Bellocampo, Hunfrido de Boun (Bohun), Matheo de Herefordia, Waltero de Meduana, Manassero Bifeth dapifero, Wilhelmo Malet, Wilhelmo de Curci, Roberto de Dunestanvilla, Joselino de Lanyalis, Wilhelmo de Caisneto, Gaufrido de Ver, Wilhelmo de Hastings, Hugone de Moravilla, Alano de Nevilla, Simone filio Petri, Wilhelmo Maudut, camerario, Johanne Maudut, Johanne Marischallo, Petro de Mara, et multis aliis proceribus et nobilibus regni, tam clericis quam laicis.

Consuetudinum vero et dignitatum regni recognitarum quædam pars presenti scripto continetur. Cujus partis capitula hæc sunt.

(Incipiunt consuetudines quas avitas vocant*.)

I. De

* These words seem to have been inserted by the Monk who made the transcript.

I. De advocacione et præsentatione ecclesiarum, si controversia emerferit inter laicos, vel inter clericos et laicos, vel inter clericos, in curia domini regis tractetur vel terminetur.

II. Ecclesiæ de feudo domini regis non possunt in perpetuum dari sine assensu et concessione ipsius.

III. Clerici reſtati, et accusati de quocunque re, summoniti a justitia regis venient in curiam ipsius, responsuri ibidem de hoc unde videbitur curiæ regis quod sit ibi respondendum, et in curia ecclesiastica unde videbitur, quod ibidem sit respondendum, ita quod justitia regis mittet in curiam sanctæ ecclesiæ ad videndum qua ratione res ibi tractabitur. Et si clericus convictus vel confessus fuerit, non debet de cætero eum ecclesia tueri.

IV. Archiepiscopis, episcopis, et personis regni non licet exire de regno absque licentia domini regis. Et si exierint, si domino regi placuerit, asscurabunt quod nec in eundo, nec in moram faciendo, nec in redeundo perquirent malum vel dampnum regi vel regno.

V. Excommunicati non debent dare vadium ad remanens, nec præstare juramentum, sed tantum vadium et plegium standi iudicio ecclesiæ ut absolvantur.

VI. Laici non debent accusari nisi per certos et legales accusatores et testes in præsentia episcopi, ita quod archidiaconus non perdat jus suum, nec quicquam quod inde habere debeat. Et si tales fuerint qui culpantur, quod non velit vel non audeat aliquis eos accusare, vicecomes requisitus ab episcopo faciet jurare duodecim legales homines de vicineto, seu de villa, coram episcopo, quod inde veritatem secundum conscientiam suam manifestabunt.

VII. Nullus qui de rege tenet in capite, nec aliquis dominicorum ministrorum ejus, excommunicetur, nec terræ alicujus eorum sub interdicto ponantur, nisi prius dominus rex, si in terra fuerit, conveniatur, vel justitia ejus, si fuerit extra regnum, ut rectum de ipso faciat, et ita, ut quod pertinebit ad curiam regiam ibidem terminetur, et de eo quod spectabit ad ecclesiasticam curiam ad eandem mittatur, ut ibidem terminetur.

VIII. De appellationibus, si emerferint, ab archidiacono debent procedere ad episcopum, et ab episcopo ad archiepiscopum. Et si archiepiscopus defecerit in justitia exhibenda, ad dominum regem perveniendum est postremo, ut præcepto ipsius in curia archiepiscopi controversia terminetur, ita quod non debet ulterius procedere absque assensu domini regis.

IX. Si calumpnia emerferit inter clericum et laicum, vel inter laicum et clericum, de ullo tenemento, quod clericus ad eleemosinam velit attrahere, laicus vero ad laicum feudum, recognitione duodecim legalium hominum per capitalis justiciæ regis considerationem terminabitur, utrum tenementum sit pertinens ad eleemosinam, siue ad feudum laicum, coram ipsa justiciâ regis. Et si recognitum fuerit ad eleemosinam pertinere, placitum erit in cura ecclesiastica; si vero ad laicum feudum, nisi ambo tenementum de eodem episcopo vel barone advocaverint, erit placitum in curia regia. Sed, si interque advocaverit de feudo illo eundem episcopum vel baronem, erit placitum in curia ipsius. Ita quod propter factam recognitionem seisinam non amittat qui prior seifitus fuerat, donec per placitum dirationatum fuerit.

X. Qui de civitate, vel castello, vel burgo, vel domini manerio domini regis fuerit, si ab archidiacono vel episcopo super aliquo delicto citatus fuerit unde debeat eisdem respondere, et ad citationes eorum satisfacere noluerit, bene licet eum sub interdicto ponere: sed non debet excommunicari priusquam capitalis minister domini regis villæ illius conveniatur, ut justiciet eum ad satisfactionem venire. Et si minister regis inde desceperit, ipse erit in misericordia domini regis, et exinde poterit episcopus accusatum ecclesiastica justiciâ cohibere.

XI. Archiepiscopi, episcopi, et universæ personæ regni qui de rege tenent in capite, habent possessiones suas de domino rege sicut barones, et inde respondent justiciis et ministris regis, et secuntur [sequuntur] et faciunt omnes rectitudines et consuetudines regias, et, sicut barones cæteri, debent interesse judiciis curiæ domini regis cum baronibus, usque perveniantur in iudicio ad diminutionem membrorum vel mortem.

XII. Cum vacaverit archiepiscopatus, vel episcopatus, vel abbatia, vel prioratus de dominio regis, debet esse in manu ipsius, et inde percipiet omnes redditus et exitus, sicut dominicos. Et cum ventum fuerit ad consulendum ecclesiæ, debet dominus rex mandare potiores personas ecclesiæ, et in capella ipsius domini regis debet fieri electio assensu domini regis et consilio personarum regiarum ad hoc faciendum vocaverit. Et ibidem faciet electio et investitura et fidelitatem domino regi, sicut ligio domino de vita sua, et de membris, et de honore suo territorio (salvo ordine suo) priusquam sit consecratus.

XIII. Si

APPENDIX TO THE THIRD BOOK.

XIII. Si quisquam de proceribus regni defortiauerit archiepiscopo, vel archidiacono, de se vel de suis iusticiam exhibere, dominus rex debet eos iusticiare. Et si forte aliquis diffortiaret D. regi rectitudinem suam, archiepiscopi et archidiaconi debent eum iusticiare ut dom. regi satisfaciatur.

XIV. Catalla eorum qui sunt in foris facto regis non detineat ecclesia vel cimiterium contra iusticiam regis, quia ipsius regis sunt, siue in ecclesiis, siue extra fuerint inventa.

XV. Placita de debitis, quæ fide interposita debentur, vel absque interpositione fidei, sint in iusticiâ regis.

XVI. Filii rusticorum non debent ordinari absque assensu domini de cuius terrâ nati esse dignoscuntur.

Facta est etiam prædictarum consuetudinum et dignitatum recordatio regiarum à præfatis archiepiscopis, et episcopis, et comitibus, et baronibus, et nobilioribus et antiquioribus regni, apud Clarendonam, quarto dicente purificationem S. Mariæ, perpetuæ virginis, domino Henrico, cum patre suo domino rege, ibidem præsentem.

Sunt autem et aliæ multæ et magnæ consuetudines et dignitates S. matris ecclesiæ, et domini regis, et baronum regni, quæ in hoc scripto non continentur. Quæ saluæ sint S. ecclesiæ, et D. regi, et hæredibus suis, et baronibus regni, et in perpetuum inuolabiliter obseruentur.

Nº III.

Bibl. Cotton. Claudius, B. ii. 3. folio 92.

Thome Cantuariensi Archiepiscopo, Gillebertus Londoniensis Episcopus 126.

This refers to book iii. page 468, and other passages in this history.

VENERABILI Domino et Patri in Christo Thome Cantuariensi Archiepiscopo, Gillebertus Londoniensis ecclesiæ minister, salutem.

Multiplicem nobis et diffusam late materiam, profunde Pater, et copiose rescribendo proponitis, et nos, licet super appellatione ad dominum Papam prosequenda solliciti, vestre tamen sublimitati rescribere gravi quidem et

nos

nos graviter urgente necessitate compellitis. Emissis enim sparsim elogiis nos de toto fratrum nostrorum collegio seorsum ponitis ad convitia, ut singulariter in nos, etsi immeritis, ignominiosa congeratis et probra. Sobrii sensus hominem, gravitatis reverende personam, magistrum, ratione prelationis et dogmatis, veritati reverenter obnoxium, mirum est ad verba veritatis exarsisse tam graviter, et, velut evocatum ad coleras, innocentiam filii pie patri consulentem non solum non admisisse, sed et ipsius opinionem nota quadam malitie, cujus sibi minime conscius est, ejus non id exigente merito, resperxisse: unde, cum ecclesiam Dei subvertere, fas nefasque confundere, montem illum, qui ecclesia et columptria Dei viventis est, non sano capite velle dejicere, ad ea que vestra sunt ambisse, et quod ab his obtinendis repulsi fuerimus, ob id vestram ecclesieque Dei pacem temere perturbasse, in bello domini terga dedisse, emissis scriptis publice denotemur, difficile est ut fileamus, ut hanc adversum nos opinionem, vel a presentibus admitti, vel in defensionem future posteritati transmitti, confessionem innuente silentio, permittamus. Cum sit itaque malorum radix et origo cupiditas, ne nos hujus suspectos habeant quibus prava suadentur e facili, nos hinc jubet necessitas exordiri. Ait apostolus, Quis scit hominum occulta hominis, nisi spiritus hominis qui est in ipso? Latent quidem homines occulta hominum, et abyssum cordium de celo dominus inus intuetur. Ipsum ignota non transeunt, occulto non fallunt. Est enim sermo Dei vivus et efficax, penetrabiliorque omni gladio ancipiti: nec est ulla creatura invisibilis in conspectu ejus. Ipsi et coram ipso loquimur. Sub ipsius examine non vana aut ficta, sed que veritate conscientie subnixa sunt, confidenter et libere respondemus; asserentes utique, quoniam ad ea que vestra sunt ambitionis stimulos nunquam vel momento sensimus. Honorem hunc nulli unquam invidimus. Nulli ad hanc gratiam munere vel obsequio, gratia vel favore, deservivimus, ut ad hujus fastigia culminis accessum nobis sacrilegum, quibuscunque modis aut adminiculis, aptaremus. Quis hoc melius, pater, quam vos, quis poterit liquidius estimare, quem ipsius ecclesie tunc temporis archidiaconum, et domini nostri regis electum e milibus, non consiliarium solummodo, sed cor fuisse constet et consilium; sine quo non quidem facile, sed nec erat possibile, ad hæc omnino quempiam obtinere progressum? nobis itaque quam apud vos gratiam collocavimus? num per nos, aut per

alium, vestram unquam gratiam veniis aut obsequiis attemptavimus, ut ad quod nisi per vos attingi non poterat in id ope vestra sublevaremur? Hinc vestram, pater, justum est metiri prudentiam, quales nos aliis exhibuerimus, qui nec vestre celsitudini, quam rerum summa fequebatur, ad turpe supplicare compendium, nec aliquâ favoris gratiâ unquam vel in modico blandire curavimus. Rem hoc fine concludimus, hoc nobis onus ipsi confidenter imponimus, ut sit nobis illa die repositum, si nos hujus culpe conscios in aliquo reprehendit cor nostrum. Non nostram itaque, pater, non nostrorum in vestra promotione repulsam planximus. Illo quidem die non nostra querere, sed que Domini nostri Jesu Christi; non nobis, sed ejus nominis in omnibus gloriam exhiberi, toto cordis affectu desideravimus. Attendentes rem secus fieri, condoluimus. Cernentes jus ecclesie subverti, fas nefasque confundi, montis illius magni quem dicitis deorsum cacumen inflecti, sponsam Christi libertate pristina, sibi semper usque tunc observatâ reverenter et exhibitâ, inverecundè privari, altis utique in Domino suspiriis ingemimus, et dolorum quos nunc experimur assiduè prelibationes et presagia certa, quâdam divini spiritus insinuatione, multi quidem in ecclesiâ Dei presensimus. Oportebat equidem ejus tunc meminisse quod scriptum est, "Difficile est ut bono peragantur exitu, que malis fuerint inchoata principiis." Ad ipsa quidem si recurramus initia, quis toto orbe nostro, quis ignorat, quis tam resupinus ut nesciat, vos, certâ licitatione propositâ, cancellariam illam dignitatem multis marcarum milibus obtinuisse, et aure hujus impulsu in portum Cantuariensis ecclesie il-lapsam ad ejus tandem sic regimen accessisse? quam pie, quam sanctè, quam canonicè, quo vite merito id exigente, multis quidem notum est, et filo quodam doloris intimi bonorum est cordibus exaratum. Diem suum clauserat ille bonus et bone memorie pater noster, Theobaldus ecclesie Cantuariensis dudum archiepiscopus; et vos, qui cordis oculos in casum hunc pervigiles minime claudebatis, confestim à Normanniâ celeres in Angliam reditus habuistis. Ex intervallo directus est a domini nostri regis latere vir magnus, et sapiens moderator regni, Ricardus de Luci, quem laqueis anathematis innodatum hodie dignè sic merito honorastis. Regis hic ad omnes habebat imperium, ut Cantuarienses monachi et ecclesie ipsius episcopi suffraganei vos expeterent, vos eligerent, vos in patrem et pastorem, negotium nullâ deliberationum morâ protra-

protrahentes assumerent; alioquin iram regiam non unquam declinarent; verum se regis hostes et suorum, procul dubio, ipsis rerum argumentis agnoscerent. Quod loquimur experto novimus, attendentes ecclesiam Dei suffocari graviter, ob quod in ejus libertatem quodammodo proclamavimus, verbum ilico proscriptionis audivimus, et exilio crudeliter addicti sumus: *nec solum persona nostra, sed et domus patris mei, et conjuncta nobis affinitas, et cognatio tota. Hoc quidem calice et aliis propinatum est.* Scriptum vero est; Leo rugiet, quis non timebit? Et illud, Ut rugitus leonis, sic terror regis. Quod tanto voluntatis impetu precipiebat rex, quod effectum compleri tanto nuncio perurgebat, in quod cordis oculos vos omnes iniecisse noverant, in quod omnes vestri minis et terroribus, promissis et blanditiis, vigilanter instabant, quis negaret? Torrenti huic voluntatis et precepti regii quis resisteret? Stabat regni gladius in manu vestra, si in quem torvos oculos habebatis, terribilis in hunc et importabilis ire quodam velut igne coruscans: Ille quidem gladius quem in sancte matris ecclesie viscera vestra manus paulo ante immerserat, cum, ad trajiciendum in Tolosam exercitum, tot ipsam marcarum milibus aperuistis. Qui ne limatus denuo per vos aptaretur ad vulnera, jussis obtemperavit ecclesia, et, declinando quæ metuit, simulavit se velle quod noluit. O! quam longè erant omnium corda bonorum ab hoc ipso, quam dissidentia vota! Metu tamen et impressione completum quod interminatione dirissimæ fuerat imperatum. Sic in ovile ovium, non utique per ostium, sed ascendens aliunde, introistis; et hoc, pater, introitu libertatem ecclesie, tot sibi temporum conservatam curricula, ademistis. Quæ si ejus vita est, ut scribitis, ipsam utique exanimem reddidistis. Deus bone! quis horror illa die, quis omnes horror invasit, cum prognosticum illud de more conspectum, et circumstantium oculis est oblatum; illud, inquam, prognosticum, quod, in futuri casus indicium, evangelista Mattheo quasi vaticinante, prolatum est! Ait enim Dominus siculno non habenti fructum, Nunquam ex te fructus nascatur in sempiternam: et arefacta est continuo. Oportuisset igitur illo die non recta mandanti principi respondisse, quod oportet Deo obedire magis quam hominibus. Illo utinam die corda nostra plenus timor ejus occupasset, qui potest animam in gehennam perdere, et non solum corpus occidere. Quod quia secus actum est, parit nobis enormitas hæc erubescantiam, erubescantia confusio-nem, confusio penitentiam, quæ condignam inferet opem,

ferente Domino satisfactionem; adeo ut in maxillis nostris juges lacrimae perseverent, donec convertat Dominus captivitatem Syon et consoletur merentes in Jerusalem, et clementie reducat oculos in desolatos Jerusalem. Interim, ut quod actum est currente stilo prosequamur, sublimationis vestre quis fructus extiterit audiamus. A pio rege nostro suscepto regni gubernaculo, ad illum usque diem ecclesia quidem sancta altâ pace floruerat, excepto quod ut diximus, ad instaurandum in Tolosam exercitum manus vestras nimis in se graves agnoverat. De cetero, sub bono principe cuncta gaudebant, jocundissime letabantur universa; regnum sacerdotio devotum sancte prestabat obsequium, et sacerdotio firmissime fulciebatur ad bonum omne regis imperium. Exercebantur in ecclesia gladii duo, devoto Domino Jesus famulantes obsequio. Nec sibi stabant ex adverso, nec tendentes in contrario repugnabant alterutro. Unus erat populus, et, ut scriptum est, unius labii, studens peccata persequi, gaudens vitia fortiter eradicari. Hec regni fuit et ecclesie pax; alternâ sic gratiâ fovebantur, et unanimi voluntate jungebantur. In vestrâ vero promotione gratiarum sperabamus et expectabamus augmenta: et ecce, peccatis exigentibus, illico turbata sunt universa. Virtus est, peccato, cum exsurgit, occurrere, mentisque sinistros fetus ad petram, que Christus est, statim, cum nascuntur, allidere. Oportebat itaque vestram providisse prudentiam, ne dissensiones inter regnum et vos paululum in immensum excrescerent, ne de scintilla tenui in multorum perniciem tantus ignis exurgeret. Actum secus est, et ob causas, quas enumerare longum est, dissensiones adaucte sunt, inflammata est ira, et odium fortiter obfirmatum. Hec causa fuit, hinc emerfit occasio, cur ad requirendas dignitates regias, et in commune commemorandas, suum dominus rex animum applicaverit et consilium. Quarum observatio cum a nobis, et a suffraganeis ecclesie vestre exigerebatur episcopis, eo quod in quibusdam earum ecclesie Dei videbatur libertas opprimi, assensum dare recusavimus, preterquam his que salvo honore Dei et ordine nostro poterant observari. Exigebat instanter dominus noster rex observationes earum absolute sibi a nobis repromitti. Sed quod libertati repugnabat ecclesie et domini pape fidelitati, a nobis nequaquam potuit optineri. Ob causam hanc coacti sunt ceteri, et convocata concilia. Quid meminisse opus est que sunt acta Londoniis, que denuo Oxenfordie? que gesta sunt Clarendonie ad memoriam revocemus. Ubi con-

continuato triduo id solum actum est, ut observandarum regni consuetudinum et dignitatum a nobis fieret absoluta promissio. Ibi quippe vobiscum stetimus quem in Domini spiritu stare fortiter estimabamus. Stetimus quidem immobiles, stetimus imperterriti, stetimus in fortunarum dispendium, in cruciatum corporum, in subeundum exilium, subeundum quoque, si sic Dominus permisisset, et gladium. Quis unquam pater filios in suâ plus habuit confessione concordēs? quis unquam plus unanimes? Includi eramus omnes conclavi uno. Die vero tertio, cum jam regni principes et omnes quidem nobiles in summas coleras exarassent, factō quidem fremitu et strepitu, conclave quo sedebamus ingressi, rejectis palliis, exertisque brachiis, nos taliter allocuti sunt, "Attendite, qui regni statuta contemnitis, qui regis jussa non suscipitis. Non nostre sunt manus iste quas cernitis, non nostra brachia, non hec demum corpora vestra: Verum domini nostri regis hec sunt, ad omnem ejus nutum, ad omnem ejus ulciscendam injuriam, ad omnem ejus voluntatem, quæcunque fuerit, jam nunc applicari promptissima. Ipsius mandatum, quodcunque fuerit, ex solo nobis voluntate ejus erit justissimum. Revocate consilium, inclinate animos ad preceptum, ut declinatis, dum fas est, quod jam non poterit evitari periculum." Quid ad hec? Quis fugit? Quis terga vertit? Quis animo fractus est? Vestra nobis exprobratur epistola, quod in die belli conversi sumus, quod ex adverso non ascendimus, quod nos murum pro domo Domini non opposuimus. Judicet Dominus inter nos: Ipse judicet ob quem stetimus, ob quem ad minas principum flecti nequivimus; Judicet ipse quis fugerit, quis in bello desertor extiterit. Stetit procul dubio vir nobilis, et spiritus in Domino constantissimi, Wintoniensis Henricus. Stetit Eliensis Nigellus, Stetit Lincolnienſis Robertus, Cycestrensis Hylarius, Saresberienſis Jocelinus, Exonienſis Bartholomeus, Cestrenſis Ricardus, Wigornienſis Rogerus, Herefordenſis Robertus, Londonienſis Gillebertus. His omnibus percussor defuit. Hii itaque, temporalia reputantes ut stercora, pro Christo et ecclesiâ exposuerunt se et sua. Dicatur itaque quod verum est; fiat sub sole quod presentibus nobis et cernentibus actum est. Terga dedit dux militie, ipse campi ductor aufugit; a fratrum suorum collegio simul et consilio dominus Cantuarienſis abcessit, et tractatu seorsum habito, ex intervallo reversus ad nos, in hec verba prorupit. *Est domini mei voluntas ut pejerem, et*

ad presens subeo, et incurro perjurium, ut potero penitentiam acturus in posterum. Auditis his, obstupuimus, et, mutuis herendo conspectibus, ad lapsum hunc, a summo, ut estimabamus, virtutis et constantie viro, suspirantes ingemimus. Non est apud Dominum Est et non; nec ejus sperabamus sic moveri posse discipulum. Languenta capite langueat cito cetera membra, et ipsius infirmitas ad cetera statim membra dilabitur. Ipse quod exigebatur annuens, et dignitates regias et antiquas regni consuetudines, antiquorum memoriâ in commune propositas et scripto commendatas, de cetero se domino nostro regi fideliter observaturum in verbo veritatis absolute promittens, in vi nobis obediencie precepit, sponsione simili nos obligare. Sopita est hoc sine contentio. Sacerdotio sic est pax conciliata cum regno. Descendit Israel in Egiptum, unde cum multâ gloriâ legitur postmodum ascendisse. Nobis quoque spes magna resederat, id quod dominus noster rex ad tempus ira motus exegerat, sedato ipsius animo, ad Dei gloriam et ipsius honorem, in bonum denuo esse reformandum. Invidit paci tenere pacis ille turbator pristinus: et qui, procellis enavigatis, sperabamus tenere tum portum, aquilonis ecce flatibus compellimur in profundum. Recens erat illa in verbo veritatis regi facta promissio, vos nisi ab eo impenetratâ licentiâ non discessurum a regno. Scriptum est, "Verba sacerdotis comitem semper habeant veritatem." Illud quoque, "Quod quis dicit veritati debet, et quod promittit fidei." Emenfis tamen diebus paucis, ventis vela commisistis, et egressum a regno, rem regia penitus ignorante, procurastis. Quo audito nemo rege plus stupuit, nemo plus doluit. Stupuit non esse completum quod fuerat a pontifice quasi juramento promissum. Doluit in se grave sciens scandalum suscitari, et illesam hactenus opinionem suam ex fugâ hac apud gentes et regna gravissime laceffire. Quid enim veritatis ignari, quid poterant ex his aliud suspicari, quam regem regie pietatis immemorem in tyranni rabiem exarsisse, et odio Christi ministrum ejus a regno suo et dominationis sue finibus expulisse. Mallet in carne sua manû vestrâ vulnus gravissimum excepisse, quam hoc fame sue dispendium toto orbe Christiano per vos et vestros incurrisse. Quid plura? Aquilone vela perflante completa fuisset jam navigatio, nisi flatu meliore ceptis Auster obstitisset. Quo flante prospere, navis ad litus, unde cepit navigare, perducta est. In manus itaque regis cum

cum vos rei deduxisset eventus, nunquid iram secutus, aut potentiam, in vos aut excessit opere, aut est quicquam locutus aspere? Absit. At benigne susceptum et veneratione quam decuit honoratum remisit ad propria, et vos in regno manere, commissam vobis ecclesiam regere, animi vestri dilectionem et dulcedinem sibi rebus ipsis ostendere, humiliter et benigne supplicando commonuit. Vix Auster detonuerat, et jam Circius fulminabat; motus animorum vix utrimque resederant, et ecce de novo emerfit unde ferventius ebullirent. Perlatum est ad vos mandatum regium, ut cuidam regni nobilium, super predio quod a vestra vendicabat ecclesia, quod justum foret exhiberetis. Qui post statutos dies ad regem reversus asseruit, se penes vos justiciam assequi nequivisse, et se id ipsum, juxta regni statuta, coram vobis, suo congruoque testium juramento, comprobasse. Quo regem prosequente diutius, et super exhibendâ sibi justiciâ quotidie supplicante, domini nostri regis ad vos est emissa citatio, ut statuto die se vestra sublimitas sibi exhiberet, ut quod ipso mandante non egerat, eo cognoscente litemque judicio dirimente compleret. Non est a vobis hec admissa citatio, *verum vos in hoc sibi minime paritutum declaravit a vobis ad ipsum delegata responsio*. Arbitratus hoc ipso dominus rex juri suo detrahi graviter et potestati, ecclesiam regni jussit ad concilium Norhamtoniam convocari. Convenit populus ut vir unus; et assidentibus sibi quorum id dignitati congruebat et ordini, quod dictum est super exspecto mandato suo in querelam adversus vos, usus, quâ decuit, modestiâ et venguatate, proposuit. Porro quod intendit, fratrum vestrorum non expectato vel expetito consilio, vestra in continenti confessio confirmavit; adjiciens vos ob id non paruisse mandato, quod Johannes ille, qui regis ad vos mandatum pertulerat, in vestra presentia, non evangelio, sed tropario quodam proposito, juravisset. Est itaque dictum in commune, causam non eam esse, ob quam mandatum regium oportuisset omisisse: regnique fore consuetudinem in offensis hujusmodi mulctâ pecuniariâ suam rem taxante misericordiâ placari regem. Paruit regie sublimitas vestra sententie, ad plenum cavens super judicati solutione. Vestram tamen non latebat prudentiam decretum illud apostolicum, quod in hunc modum expressum est, "Nullus episcopus, neque pro civili, neque pro criminali causa, apud quemvis judicem, sive civilem, sive militarem, producat vel exhibeatur." Et illud, "Clericus

apud secularem judicem, si pulsatus fuerit, non respondeat aut proponat." Et illud Gelasii pape ad Elpidium episcopum, "Quo ausu, qua temeritate rescribis ad Ravennam te parare proficisci, cum canones evidentem precipiant, nullum omnino pontificum, nisi nobis ante visis aut consultis, ad comitatum debere contendere." Sed hec altiori forte scientia et spiritu clariore discernitis; et quia regem unctio divina sanctificat, ungitur ei manus in sanctitatem operum, brachiorum nexus in castitatem complexuum, pectus in cordis munditiam, scapule in laborum pro Christo tolerantiam, crismate caput infunditur, ut secundum Christum, a quo crisma dictum est et ejus nomine consecratum, apto semper moderamine studeat sibi creditum dispensare, ipsum a ceteris secernitis; et judicem, non secularem tantummodo, sed et ecclesiasticum reputatis. Ad quod roborandum, id fortasse proponitis, quod imperiali judicio papa Leo quartus emendare voluit, si quid in subditos injuste commisit, Ludovico Augusto sic scribens: "Nos si incompetenter aliquid egimus, et in subditis juste legis tramitem non conservavimus, vestro aut missorum vestrorum cuncta terminentur examine; ne sit in posterum quod indiscretum valeat permanere." Si vobis mens ista est, discretioni vestre quam plurimum in hoc consentit opinio, ut, ob sacramenti reverentiam, regem estimet, non omnes, sed quas distinguunt, ecclesia et personarum ecclesie causas oportere discutere, et regie jurisdictionis examine terminare. Habet enim ecclesia quedam divino tantum jure, quedam, ut testantur, humano. Gradus ecclesiasticos, ordines sacros, et dignitates hiis coherentes et potestates, divino tantum jure fortitur. Unde si baptizat aut consecrat, solvit aut ligat, predicat et informat, hec tantum spiritualia sunt, collata desuper ab homine in hominem, non hominis dono, sed divino intus operante spiritu, propagata. Hunc sibi nemo sumit honorem, sed qui vocatur a Deo, tanquam Aaron. Affecerunt hæc Choraish, Dathan, et Abiran, a Domino non vocati, et inaudita morte perierunt. Inmiscuit se sacrificiis Jeroboam et Ozias, alter manus ariditate, alter lepra, percussi sunt. Est igitur in his omnibus sacerdos quilibet, ut pater, ut pastor, omni rege superior: rex, ut filius, ut discipulus, longe inferior estimatur. Si itaque rex delinquat in Deum, imitando Theodosium, conciliari studeat opera sacerdotum. Si sacerdotes se accusent alterutro, hec suo rex non usurpet justicio; sed, ne patrum verenda conspiciat, incedens retrorsum queque hujusmodi

hujusmodi pallio laudis operiat. Sunt et ecclesie corporalia quedam divino tantum jure possessa. In his decime numerantur, oblationes, et primitie, quae segregando sibi sanctificavit dominus, et in usus sibi ministrantium eterna lege sancivit. Que quia divino tantum jure percipit, ad cognoscendum super his potestas se regia non extendit. Humano vero jure multa possidet, que sola vel sibi sunt hominum donatione concessa, non id precipiente Domino, vel legem super hoc statuente, ut jam non Leviticâ solum portione sit limitata, verum donis eximiis et possessionibus ampliata. Transfulerunt ad eam ampla sua patrimonialia reges, transfulerunt electi principes, ut jam sit etiam corporaliter impletum, quod de filiis ecclesie dudum est prophetâ vaticinante predictum; "Fortitudinem gentium comedetis, et in gloriâ eorum superbietis." Et illud; "Ut det illis hereditatem gentium. Item Ysaïas, "Dilata tentorium tuum; longos fac funiculos tuos; ad "dextram et ad levam dilataberis." Vetus quidem habet historia, in opus illud tabernaculi antiquum illum populum eâ devotione contulisse donaria, ut compulsi artifices dicerent Moyse, Plus offert populus quam necesse est. Quorum quantacunque devotio, filiis tamen gratie non equatur, quibus sepe numero satis non est donare singula, nisi supererogent universa. Est vero cuique liberum, cum transfert donando quod suum est, donationi conditionem quam velit annexere, quantum nec legibus nec bonis constet moribus obviare. Hanc itaque donationi regum conditionem annexam estimant, hoc consuetudine tot temporum obtinente curriculum affirmant, ut regibus ecclesie militaria, et annexa prediis alia quedam persolvant obsequia, et possessiones ipsas a regibus, persone sue principaliter hominio, et fidelitate, presente evangelio, promissâ, recognoscant. Sic igitur ecclesie geminata potestas est, ut hinc regi celesti serviat, hinc terreno principi quod ad eos spectat exhibeat. Ejusque ministros efficit potestas, hinc a Deo collata, pontifices, hinc a rege suscepta, comites aut barones. Potestas hec est quâ magnum in palatio obtinet ecclesia principatum, cum in omnibus regni judiciis, preterquam si de vite periculo tractetur aut sanguine, locum habeat ipsa precipuum. Hec regi nos obligant, (ut affirmant) ut ab ipso citatî debeamus assistere, et singulorum causas universi discutere et judicare. Nam qui in his que ad Deum sunt gradu quodam distinguimur, ut superiores quidam, inferiores alii, reputemur et simus, nos in hoc pares estimant, ut

APPENDIX TO THE THIRD BOOK.

si de fundis ad ecclesiam liberalitate regiâ devolutis, inter nos, aut in nos, fuerit oborta contentio, apud regem quæ spectant ad singulos univerſorum definiat pronuntiatio. Nec mirum si patrem teneat à filio lata sententia, et cum hominio fidelitas reverenter exhibita. Cum sit igitur a Deo gemina potestas, hinc sacerdotalis, hinc regia; utramque secundum quid preesse alteri, et ab alterâ secundum quid posse judicari, patrum auctoritate confirmant, ut sit regum et presulum vicissitudo hec, quâ se vicissim judicant et judicantur a se, forte quoddam caritatis vinculum, reverentie debitum, et utrique necessitudo quedam conservande pacis ad alterum. Hec et his altiora considerans, regem, quasi precellentem, prout monet apostolus, honorastis, et ejus parendo sententie rectè judicem agnovistis, sibi que servando quod suum est, ipsum, in his que ad Deum sunt, vestre parere sublimitati prudenter et providè monuistis. Omni humane creature propter Deum sancta se submittat humilitas, et quo se dejicit inferius, eo, juxta verbum Domini, meretur altius et gloriosius exaltari. Atque in his utinam humilitatis finibus res ipsa tota refidisset, et, cum à vobis quedam debita reposceret Dominus noster rex, cum de summâ pecunie, quam ipse manu vestra ex caducis quibusdam excrevisse memorabat, quod jus diceret id sibi solum peteret exhiberi, ad declinandum regalis curie judicium tunc se vester minimè zelus erexisset, Nam quid poterat inferre periculi danda super hac petitione sententia? Ad reginam ecclesie vos a curiâ transferri voluit, et ab ipsius nexibus hoc ipso vos, ut plures opinantur, absolvit. Quod si ad debita minimè referendum est, ut evectus loco sic absolvatur a debito, poterat negotium per exceptionem in rem versum plurimum expediri; et, si quid compoto nequivisset includi, iratè magis repetenti sua quam avidè, de reliquo poterat satisfdari; et civilis hæc causa, absque hoc rerum turbine, pace poterat honestissimâ terminari. Sed inauditum dicitis, ut in regis curiâ Cantuariensis unquam compelleretur ad talia. Et id dixeritis inauditum, officialem curie repentino transitu ad illam ecclesiam unquam hæcenus sic ascendisse, ut hodie quis curiam, cras dispenseret ecclesiam, ab avibus et canibus ceterisque curie jocundis usibus cito quis astaret altaribus, et episcopis totius regni spiritualia ministraret et sacerdotibus. Usus igitur in diversa tendente consilio, domum regiam, crucem gestans in manibus, introistis, et execrande cujusdam malitie suspectum regem omnibus
ilico

ilico reddidistis. At ejus innocentiam summis efferenda preconiiis patientia declaravit. Illationem crucis adversum se et si moleste tulerit, fines tamen regie modestie non excessit. Non irâ motus efferbuit, non verbo malignatus aut opere, causam, quam sua repetens intenderat, sine studuit justicie debito terminare. At, declinando judicium, ad dominum papam appellastis, et, sicut in ingressu, sic in egressu vestro, summam regis mansuetudinem et tolerantiam vobis observate pacis indicii agnovistis. Nam ut, in Absalonem prodeunte exercitu, paterna pietas exclamavit; "Servate mihi puerum Absalon", sic, ejus mandato, voce statim preconariâ cunctis innotuit, ut si quis vobis aut vestris cuiquam molestus existeret ultore gladio deperiret. Addidistis ad hæc, ut, tanquam vitæ vestræ vel sanguini machinarentur insidias, fugâ nocte initâ, mutato habitu, post latitationem aliquantulam, a regno clam transmeastis, et nemine prosequente, nullo vos expellente, extra dominationis sue loca, in regno vobis altero ad tempus sedem elegistis. Inde navem disponitis gubernare, quam in fluctibus et tempestate, subducto remige, reliquistis. Hinc nos vestra jubet autoritas, et hortatur, ut convertamur ad vos et salvi simus, ut vestris inherendo vestigiis pro Christo mortem subeamus, et pro liberandâ ipsius ecclsiâ animas ponere non metuamus. Et utique si attendamus quanta nobis promittantur in celis, debeant animo vilescere quecunque possidentur in terris. Nam nec lingua dicere nec intellectus capere valet illa superne civitatis quanta sint gaudia; angelorum choris interesse, cum beatissimis spiritibus glorie conditoris assistere, presentem Dei vultum cernere, nullo metu mortis affici, incorruptionis sue munere perpetuo gloriari! Passiones hujus temporis minime condigne sunt ad futuram gloriam que revelabitur in sanctis; et quod modo leve est et momentaneum tribulationis supra omnem modum eterne glorie pondus operabitur in electis. Hec nostris jamdiu sensibus insederunt, nostra jamdiu studia hec post se promissa traxerunt. Caput utinam, quod mihi scapulis infidet, licet gladius projecisset in medium, dum tamen legitimo Deoque placito certamine decertassem. *At martyrem non penâ facit, sed causâ.* Dura sancte perpeti, gloria est: improbe pertinaciter, ignominia. Pro Christo subire gladium, consummata laus est et victoria; hunc in se temerè provocare, latè patens infania. Et si vestra, pater, non solum dicta, verum facta pensamus, in mortem nec temerè nec leviter

APPENDIX TO THE THIRD BOOK.

leviter impingemus. Nam genu Clarendone curvando, fugam Norhamtone ineundo, mutato ad tempus habitu delitescendo, a regni finibus clam emigrando, quid ætium est? quid hæc agendo procurastis, nisi quod mortem, quam nemo dignabatur inferre, tam sollicitè declinastis. Nos igitur ad mortem quâ fronte pater invitastis, quam vos et formidasse et fugisse indiciis tam manifestis toti mundo luce clarius ostendistis? Que vos suadet caritas nobis onus imponere quod abjecistis? Gladius nobis imminet quem fugistis, in quem fundum jacere, non dimicare comminus, elegistis. Ad similem forte fugam nos invitastis. At nobis mare clausum est, et post discessum vestrum naves nobis sunt omnes et portus inhibiti. Insule terrarum claustra regum fortissima sunt, unde vix evadere vel se quis valet expedire. Si nobis pugnandum est, de proximo contendemus: si cum rege pugna conseritur, unde percutiemus gladio nos ibi gladius percuciens inveniet. Unde vulnus infligemus vulnera declinare nequibimus. Et annui vestri redditus nunquid vobis tanti sunt, ut fratrum vestrorum sanguine vobis hos velitis adquiri? At Judæa reportante pecuniam, hanc Judei respuerunt, quam sanguinis esse pretium agnoverunt. Sed aliam nobis causam fortasse proponitis.—Paululum itaque divertamus, ut mortis nobis suadende causam plenius attendamus. Gratias Domino, Nulla penes nos est de fide contentio, de sacramentis nulla, nulla de moribus. Viget recta fides in principe, viget in prelatiis, viget in subditis. Omnes fidei articulos regni hujus ecclesia sanè complectitur. A summi pontificis obedientiâ presentis schismatis insaniâ nemo dividitur. Ecclesie sacramenta venerantur omnes et excolunt. Suscipiunt in se, et aliis piè sanctèque communicant. Quod ad mores, in multis quidem offendimus omnes: Errorum tamen suum nullus prædicat aut defendit; verum penitentiae remedio sperat posse dilui quod admittit. *Tota igitur in regem est et de rege contentio, ob quasdam consuetudines, suis predecessoris observatas, (ut asserit) et exhibitas, quas sibi vult et expetit observari.* Super hoc a vestra sublimitate commonitus non desistit à proposito, non renunciat iis que formavit antiquitas et longa regni consuetudo. Hec est causa cur ad arma decurritis, et in sanctum caput et nobile gladium librare contenditis. In quo refert plurimum quod *has ipse non statuit, sed, ut tota regni testatur antiquitas, sic eas reperit institutas.* Nam
difficilius

difficilius evellitur quod altius radicatur. Heret planta tenacius que suas in altum jam diu radices immiserat; quam si quis transferre desiderat, non viribus evellenda est, ne protinus exarescat. Circumfodienda est prius, et humus est ejicienda; denudanda radix undique, ut sic prudens expleat diligentia quod vis commodè non expleret, incompetenter adhibita. A bonis exempla sumenda sunt, et, cum tractantur hujusmodi, ipsorum sunt opera diligentius attendenda. Predecessor vestre ille pater Augustinus multa a regno hoc extirpavit enormia, et ipsum regem fide illuminans pravas ab eò consuetudines, non quidem paucas, eliminavit, non maledictis equidem, sed benedicendo potius et predicando, exhortando salubriter, et potentum animos ad bonum fortiter inclinando. Cremensis ille Johannes, diebus nostris, in partes has a sancta Romanà ecclesià directus, regni consuetudines, in quibus jam fenuerat, immutavit: quod non maledictis aut minis, sed doctrinà sanà et exhortationibus sanctis optinuit; benedicendo seminavit, de benedictionibus et messem fecit. His, si ad arma decurrissent, nihil aut parum profecissent. A pio Francorum rege, optatà diu prole sibi jam concessà divinitus, nuper illi regno multa sunt remissa gravamina, que firmaverat antiquitas hætenus invulnera. Hec, suggerente, ut audivimus, ecclesià, et monente, non electum principem minis impetente, sublata sunt. Que denique, quanteve dignitates, libertates, immunitates, possessiones, ecclesiæ Dei, a piis regibus, orbe toto, pietate solâ, non maledicti necessitate, collata sint, quis valeat explicare! Utique tempus id volentem explicare deficiet. Hec namque regum est laude digna nobilitas: Ab ipsis supplex optinet, quod erectus in minas nullis unquam conatibus optineret. Iphis nummi pretium tam reputatur vile quam exiguum. Quod si vi quisque violenter intenderet, magnos in re modicâ rei suæ defensores spe citò frustratus agnosceret. Hec itaque, non fervore novitiò, sed mäturo fuerant attendenda consilio. Erant fratrum vestrorum et aliorum plurium in his exquirenda consilia, attendenda patrum prudentum opera, cum incommodis ecclesiæ pensanda commoda, et hec tum demum danda forte sententia, cum jam foret spes nullâ superesse remedia. Que, professio, cum datur juxta sacrorum formam canonum, attendendum est in quem detur, cur detur, quomodo detur, an expediat ecclesiæ quod detur, et obfuturum sibi si

non

APPENDIX TO THE THIRD BOOK.

non detur. Is vero quem impetitis, (ut nota vobis referamus) nunquid non ipse est quem dulcissima pignora, nobilissima conjux et honesta, subiecta sibi regna quam plurima, amicorum cetus et suis obsequentium nutibus tot populorum agmina, mundi queque pretiosa, vix detinent, vix blandiendo persuadent, quin, spretis omnibus, post crucem suam portantem Dominum Jesum nudus exeat, et paupertatem contemplando quam subiit, id facto studeat implere quod docuit ipse dicens, " Qui non bajulat crucem suam et venit post me, non est me dignus." Hec mentis ejus obstinatio est, hec maledictis opprimenda crudelitas, hec in ecclesia Dei toto orbe declamata malignitas? In hunc si maledicta congesseritis, partem sui nobilissimam suis ledi jaculis ecclesia recte condolebit. Ipso namque vulnerato, lesam se, non filiorum paucitas, sed populorum ampla numerositas, ingemiscet. In hoc vero sacra sic docet auctoritas. " In ejusmodi causis, ubi per graves dissensionum scissuras non hujus aut illius est hominis periculum, sed populorum strages jacent, detrahendum est aliquid severitati, ut majoribus malis sanandis caritas sincera subveniat": Et iterum, " Non potest esse salubris a, multis correctio, nisi cum ille corripitur qui non habet sociam multitudinem." Medico namque quis ascribit industrie, ut vulnus unum sanet, aliud longe majus, longe periculosius, infligat. Discretionis quis attribuat, ob quedam, que poterunt et levius et expeditius optineri, ecclesiam sic deferere, in principem exurgere, et ecclesie totius regni, concussa pace, animarum in subditis corporumque pericula non curare? Augustinus cessit: Ambrosius ecclesiam deferere non approbavit. Nam quid a bono principe vestra pater prudentia poterat non sperare, quem divino compunctum spiritu in Christum adeo novebat anhelare? Ille consuetudines, temporalis commodi nil prorsus sibi conferentes quanti sibi sunt, cui ipsa mundi gloria, quantamcunque se offerat, jam tota fere viluit, et a cordis sui desiderio tam procul est, ut Domino loquens sepius dicat quod scriptum est, *Insigne mei capitis adi, Domine, tu scis**. Nunquid non hic fovendus erat, et in ipso nidificanti columbe sapere dimittendus, donec plene formatus in ipso Christus occulta ejus in lucem traheret, produceret, et libertates ecclesie, non tantum has de quibus agitur, sed et longe propensiores, ipse, quasi manu propria, distribuerit? In his quidem quod scimus loquimur,

* This alludes to the Vow the King had made never again to wear his Crown.

mur, quod novimus id confidenter asserimus. Confuetudines, in quas plus candescitis, dominus noster rex jam pridem penitus exprevisset, si non hoc propositum duo graviter impedissent : Unum, quod sibi timet dedecori, à patribus ad se devoluto regno, diebus suis, subtrahi quicquam vel diminui : Alterum, si quid remittat ob Dominum, erubescit, ut hoc sibi vi reputetur extortum. Primum tamen illud jam sanctitatis pedè calcaverat, et ipsum in hoc Dei timor, innata bonitas, domini pape sancta monitio, multorumque in hoc supplicatio continuata produxerant, ut, ob ejus reverentiam, per quem ultrà omnes suos patres longe magnificatus est, ecclesiam Dei convocare et regni consuetudines, que gravamen sibi noscerentur inferre, multà devotione spiritûs, immutare vellet ultroneus et corrigere. Et, si penes vos cèpta persèverasset humilitas, ecclesiam Dei in regno exhilarasset jam diffusa latè jocunditas. Nam finem, in quem tenditis, vicerat jam supplicatio, cum male totum impedivit a vobis orta recens turbatio. Nam, cum suis nondum Britannia titulus accessisset, et levaret in eum usque tunc indomita gens illa calcaneum, cum produceret in turbatores pacis exercitum, terribiles in illum literas, devotionem patris, modestiam pontificis, minime redolentes, emisistis; et quod summi pontificis admonitio, multorumque elaboraverat supplex et intenta devotio, suspirando minas ilico sustulistis, et tam regem, quam regnum, in scandalum cunctis retro actis ferè gravius impulistis.

Avertat Deus finem, quem, neque sic procedente, metuimus; qui ne nostris erumpat temporibus, ab honorem Dei et sancte ecclesie reverentiam, ob vestrum (si placet) commodum, ob pacis commune bonum, ob minuenda scandala, et que turbata sunt ad pacem, juvante Domino, revocanda, ad dominum papam appellavimus, ut vestri cursûs impetum vos in regem pronè rapientis et regnum, ad tempus saltem cohibeamus. Quà in re bonum est, ut intra fines modestie vestre se velit zelus cohibere, ne, ut regum jura subvertere, debitam quoque sic domino pape reverentiam, appellationes ad ipsum interpositas non admittendo, nimis e sublimi studeat exmanire. Quod si placet advertere, ad Zacheum non divertisse Dominum, nisi cum de sicomoro jam descendisset, descenderis forsitan, et quem nimis exasperastis verbis aliquando pacificis mitigare sunderetis, non solum exigendo, sed et laticordionem humilem, etsi forte injuriam passus, offerendo. Puerum apostolis proposuit exemplo Dominus, qui Iesus

non

non irascitur, injurie cito non meminit, nec quicquam maliciose molitur, dum magna non affectat, sibi totum hoc innocentis vite remedio viteque jocunditate plenissimâ recompensat. Singulare itaque virtutis exemplar ipse est, qui se crucifigentes absolvit, qui latâ caritate persequentes et odientes amari precipit, et, si peccet frater in nos, veniam non solum septies, sed et septuagies septies, imperat impertiri. Ista quid non posset humilitas? apud dominum nostrum regem quid non optineret viarum ista perfectio? Callis iste rectus est, ad pacem recte perducentis, quem pater cum intraveritis, pacem ilico apprehenditis, et dispersis tristitie nebulis, cuncta pace, gaudio cuncta replebitis, et a rege piissimo dominoque nostro karissimo, non solum que ad presens petitis, sed et longè majora his, Domini spiritu cor ejus accendente, et in amorem suum semper dilatante, feliciter optinere poteritis.*

N° IV.

This refers
to p. 461.
vol. II.

Epist. cxxvi. Lib. i. Thomæ Cantuariensis Archiepiscopo Clerus Angliæ.

Venerabili Patri et Domino Thomæ, Dei gratia, Cantuariensis Archiepiscopo, suffraganei ejusdem ecclesiæ Episcopi, et Personæ per eorundem Diacones locis variis constitutæ debitam subjectionem et obedientiam.

OUÆ vestro, Pater, in longinqua discessu, inopinatâ rei ipsius novitate turbata sunt, vestrâ sperabamus humilitate et prudentiâ in pacis pristinæ serenitatem, co-operante Dei gratiâ, revocari. Erat quidem nobis solatio, quod post discessum vestrum, ad omnes ilico famâ divulgante pervenit, vos transmarinis agentem nil altum sapere, vos in Dominum nostrum Regem aut Regnum ejus nullâ machinatione insurgere, sed sponte suscep-

* The foregoing Letter is here misplaced, its proper place being after Epist. cviii. l. 1. E. Codice Vaticano, to which it is an answer. The accents denoting the Ablative Case are not in the manuscript, but are added here to help the Reader, as there is some obscurity in the style of the letter, and from the old spelling of the manuscript. The following letters are taken from the printed Brussels Edition of Becket's Letters after the Vatican Manuscript.

tum paupertatis onus cum modestia sustinere; lectioni et orationi insistere, præteritorumque jacturam temporum jejuniis, vigiliis, lacrymisque redimere; et spiritualibus occupatum studiis ad perfectionis apicem beatis virtutum incrementis adscendere. Ad pacis bona reformanda vos studiis hujusmodi gaudebamus insistere, ex quibus spes erat vos in cor Domini nostri Regis hanc posse gratiam desuper evocare, ut vobis iram Regiâ pietate remitteret; et illatas in discessu et ex discessu vestro injurias ad cor de cætero non revocaret. Erat Amicis vestris et Benevolis ad ipsum aliquis, dum hæc de vobis audirentur, accessus, et ob conciliandam vobis gratiam supplicantes benignè quandoque sustinuit. Jam verò quorundam relatione didicimus, quod ad memoriam anxie revocamus, vos scilicet in eum comminatorium emisisse, quo salutationem omittitis; quo non ad obtentum gratiæ consilium precesse porrigitis; quo non amicum quid sentitis aut scribitis, sed intentatis minis interdictum aut præcisionis elogium in eum jam dicendum fore multâ severitate proponitis. Quod si quàm durè dictum est, tam fuerit severè completum, quæ turbata sunt non jam speramus ad pacem redigi, sed in perenne quoddam odium et inexorabile pertimescimus inflammari. Rerum verò finem prudentia sancta considerat; dans opëram sollicitè, ut quod prudenter inchoat, bono quoque fine concludat. Advertat itaque, si placet, discretio vestra, quò tendat, an conatibus hujusmodi queat finem obtinere, quem optat. Nos quidem his ausis à spe magna cecidimus, et qui pacis obtinendæ spem quandoque concepimus, ab ipsis jam spei liminibus gravi quâdam desperatione repellimur. Et dum velut extracto gladiò pugna conferitur, pro vobis supplicandi locus utique non invenitur. Unde Patri scribimus ex charitate consilium, ne labores laboribus, injurias superaddat injuriis, sed, omiſſis minis, patientiæ et humilitati inserviat, causam suam divinæ Clementiæ, Dominiq; sui gratiæ misericordi committat; et sic agendo carbones ignis multorum capita coacervet et congerat. Accenderetur hoc modo charitas; et quod minæ non poterant, inspirante Domino, bonorumque suadente consilio, sola fortasse pietas obtineret. Bonum erat potius de paupertate voluntariâ gloriôsè laudari, quàm de beneficii ingratitudine ab omnibus in commune notari. Infedit altè cunctorum mentibus, quam communis vobis Dominus noster Rex exstiterit, in quam vos gloriam ab exili provexerit; et in familiarem gratiam tam latâ vos

mente susceperit, ut Dominationis suæ loca, quæ a Boreali oceano ad Pyrenæum usque porrecta sunt, Potestati cuncta subjecerit, ut in his solum hos beatos reputaret opinio, qui in vestris poterant oculis complacere. Et, ne vestram gloriam mobilitas posset mundana concutere, in his quæ Dei sunt voluit immobiliter radicare. Et dissuadente matre suâ, Regno reclamante, Ecclesiâ Dei, quoad licuit, suspirante et ingemiscente, vos in eam, quâ præestis, Dignitatem, modis omnibus studuit sublimare, sperans se de cætero regnare feliciter, et ope vestrâ et consilio, summâ securitate gaudere. Si ergo securim accipit, unde securitatem sperabat, quæ de vobis erit in cunctorum ore narratio? Quæ retributionis hæctenus inauditæ rememoratio? Parcatis ergo, si placet, famæ vestræ, parcatis et gloriæ: Et humilitate dominum, filiumque vestrum charitate vincere studeatis. Ad quod si nostra vos monita movere nequeunt, debet saltem summi pontificis, sanctæque ecclesiæ Romana dilectio et fidelitas inclinare. Vobis enim suaderi debet è facili, ne quid attentare velitis, quod laboranti jamdiu matri vestræ labores augeat, quovè multorum inobedientiam deploranti in eorum qui obediunt amissione dolor accrescat. Quid enim si vestrâ, quòd absit, exacerbatione et operâ Dominus noster, quem, largiente Domino, populi sequuntur et regna, à Domino Papa recesserit, ipsumque sibi fortassis adversum vos solatia denegantem sequi de cætero declinaverit? Ipsum namque, in hoc, quæ supplicationes, quæ dona, quot, quantave promissa sollicitant? In petrâ tamen firmus huc usque persistit, et totum quod mundus offerre potest victor altâ mente calcavit. Unum nobis timori est, ut quem oblata divitiæ, et totum quod in hominum gloriâ pretiosum est, flectere nequiverunt, animi sui valeat indignatio sola subvertere. Quod si per vos acciderit, in threnos totus ire poteritis, et lacrymarum fontem oculis vestris de cætero negare nullâ quidem ratione poteritis. Revocetis itaque, si placet Sublimitati vestræ, consilium, Domino quidem Papæ, sanctæque Romanæ ecclesiæ, vobisque, si placet advertere, modis omnibus, si processerit, obfuturum. Sed qui penes vos alta sapiunt vos hâc fortè vitâ progredi non permittunt. Hortantur experiri quis sitis, in Dominum Regem, et omnia quæ sua sunt, potestatem exercere quâ præestis. Quæ nimirum potestas peccanti timenda est, satisfacere nolenti formidanda. Dominum verò Regem non quidem non peccasse dicimus, sed semper Domino

mino paratum satisfacere confidenter dicimus et prædicationis. Rex à Domino constitutus paci providet per omnia subditorum; et, ut hanc conservet ecclesiis et commissis sibi populis dignitates Regibus ante se debitas et exhibitas sibi vult ac exigit exhiberi. In quo si inter ipsum et vos aliqua est oborta contentio, à summo super hoc pontifice, paternâ gratiâ, per venerabiles fratres nôtres Londoniensem et Herefordensem episcopos conventus et commonitus, non in cælum os suum posuit, sed de omnibus, in quibus vel ecclesia, vel ecclesiastica quæcumque persona, se gravatam ostenderet, se non alienum quærere, sed ecclesiæ regni sui pariturum iudicio, humiliter et mansuetè respondit. Quod quidem et factis implere paratus est, et dulce reputat obsequium, ut corrigat, si quid offendant in Deum. Nec solum satisfacere, sed etiam, si jus exigat, in hoc satisfacere paratus est. Igitur et satisfacere, volentem, ecclesiæque se iudicio, in his quæ, sunt ecclesiæ, nec in modico subtrahentem, colla Christi jugo subdentem, quo jure, quâ lege quovè canone aut interdictione gravabitis, aut securi, quod absit, Evangelicâ præcidetis? Non impetu quidem ferri, sed iudicio prudenter regi, laudabile est. Unde nostrum omnium una est in commune petitio, nè consilio præcipiti maculare pergatis et perdere, sed commissis ovibus, ut vitam, ut pacem, ut securitatem habent, paternâ studeatis gratiâ providere.

Movet quidem omnes nos, quod in patrem nostrum, Dominum Saresberiensem episcopum, et decanum ejusdem, præpostere, ut quidam existimant, nuper actum audivimus: in quos suspensionis aut damnationis poenam, ante motam de culpâ controversiam, calorem, ut videtur, iracundiæ, plusquàm justitiæ secutus tramitem, intorsistis. Ordo judiciorum novus hic est, huc-usque legibus et canonibus, ut sperabamus, incognitus, damnare primum, et de culpâ postremo cognoscere. Quem ne in Dominum nostrum Regem et regnum ejus, nè in nos et commissas nobis ecclesias et parochias, in Domini Papæ dânum, sanctæque Romanæ Ecclesiæ dedecus et detrimentum, nostræque confusionis augmentum non modicum, exercere sentetis et extendere, remedium vobis appellationis opponimus. Et qui contra metum gravaminum in facie ecclesiæ vivâ jamdudum voce ad Dominum Papam appellavimus, iterato jam nunc ad ipsum scripto etiam appellamus, et appellatione terminum diem adscensionis Dominicæ designamus, quantâ quidem possumus devotione supplicantes,

tes, ut, inito salubriori consilio, vestris ac nostris laboribus expensisque parcatis, causamque vestram in hoc, ut remedium habere queat, ponere studeatis. Valere vos optamus in Domino, Pater.

N^o. V.

*Epist. cxxvii. Lib. i. Thomas Cantuariens. Archiepiscop. Universo Clero Angliæ.**

Thomas Dei gratia Cantuariensis ecclesiæ minister humilis venerabilibus Fratribus suis, universis Cantiae Provinciæ Dei gratia Episcopis, si tamen universi scribunt, salutem, et id agere quod nondum agunt.

This Letter refers to p. 461, of the History.

FRATERNITATIS vestræ scriptum, quod tamen de prudentiæ vestræ communi consiliæ non facile credimus emanasse, nuper exinsperato suscepimus. Cujus continentia plus videtur habere mordacitatis quàm solatii. Et utinam magis esset emissum de pietatis studio, de charitatis affectu, quàm de obedientia voluntatis. Charitas enim non quærit quæ sua sunt, sed quæ Jesu Christi. Erat quippe de jure officii, si veritatem habet Evangelium, quod quidem habet, si rectè agitis ejus officium, si fideliter ejus negotium geritis cujus representatis figuram, magis eum timere qui potest animam et corpus mittere in gehennam, quàm qui potest corpus occidere; magis Deo obedire quàm hominibus, Patri quàm Domino; ejus exemplo, qui factus est Patri obediens usque ad mortem. Mortuus itaque est ipse pro nobis, nobis relinquens exemplum, ut sequamur ejus vestigia. Commoriamur ergo et nos ei, ponamus animas nostras pro liberandâ ecclesiâ à jugo servitutis, et oppressione tribulantis, quam ipse fundavit, cujus comparavit libertatem sanguine proprio; ne, si, secus egerimus, merito comprehendat nos illud Evangelicum, “Qui amat animam suam plus quàm me, non est me dignus.” Optimè nosse debueratis, quoniam, si justum est quod præcipit imperator, ejus debetis exequi voluntatem;

* This Title is wrong, not being agreeable to the superscription which follows: but it stands so in the printed Edition of Becket's Letters, and likewise in the Cottonian Manuscript in the British Museum.

tem; si verò contrarium, respondere, “Quoniam oportet nos magis obedire Deo, quam hominibus.” Unum vobis dico, ut salva pace vestra loquar, multo tempore filii, expectans si fortè inspiraret Dominus vobis, ut resumeretis vires, qui conversi estis retrorsum in die belli: Si fortè saltem aliquis ex omnibus vobis adscenderet ex adverso, opponeret se murum pro domo Israhël, simularet saltem inire certamen contra eos, qui non cessant quotidie exprobrare agmini Domini. Expectavi: non est qui adscendant: Sustinui: non est qui se opponat: Silui: non est qui loquatur: Dissimulavi ego, non est qui vel simulatione certet. Reposita est mihi de reliquo querelæ actio, ut meritò clamare habeam; “Exurge, Deus, judica causam meam.” Vindica sanguinem ecclesiæ, quæ eviscerata est, quæ facta est oppressione exanimis. Superbia enim eorum qui oderunt ejus libertatem adscendit semper, nec est de cætero qui faciat bonum.

Utinam, Fratres dilectissimi, is esset vobis affectus in defensionem libertatis ecclesiæ, qui paret et propinatur nobis in ejus confusionem, literis vestris, ut credimus, minus legitime appellatoriis. Verum fundata est ipsa supra firmam petram, nec est qui eam possit evellere, etsi concutere. Ut quid ergo quæritis me confundere? Immò vos ipsos in me; immo et me vobiscum; Hominem qui suscepi in me periculum, sustinui tot opprobia, toleravi tot injurias, expertus sum etiam proscriptionem pro omnibus vobis. Expediebat quidem unum affligi pro ecclesiâ istâ; ut vel sic excutiat à servitute. Discutite mente simplici causam istam, examine negotium, diligenter attendite quis ejus debeat esse finis; ut, deductâ majestate imperii, postpositâ penitus personarum acceptione, quarum Deus acceptor non est, faciat ipse vobis intelligere, quid est quod egeritis, quidque quod intenditis agere. Auferat ipse Deus velamen de cordibus vestris, ut cognoscatis quid agere debeatis. Dicat ex omnibus vobis qui noverit, si unquam post meam promotionem alicujus vestrum tuli bovem aut asinum, si alicujus pecuniam, si alicujus causam iniquè judicavi, si alicujus vestrum dispendio comparavi mihi compendium: Reddo quadruplum. Si verò non est quod offenderim, ut quid me solum derelinquitis in causâ Dei? Quare vos ipsos vobis ipsis opponere curatis in causâ istâ, quâ nulla specialior est ecclesiæ? Nolite, patres, nolite vos ipsos et ecclesiam Dei, quantum in vobis est, confundere, sed convertimini ad me et salvi eritis. Do-

minus enim dicit, "Nolo mortem peccatoris, quantum ut convertatur et vivat." State mecum viriliter in prælio, apprehendite arma et scutum, et exurgite mihi in adiutorium. Accingimini gladio verbi Dei potentissimi, ut simul omnes fortius et valide valeamus unâ resistere, pro officii nostri debito, adversum malignantes, adversum operantes iniquitatem, adversum eos qui quærunt tollere animam ecclesiæ, quæ est libertas, sine quâ nec viget ecclesia, nec valet; adversum eos qui quærunt hæreditatē sanctuarium Dei possidere.

Festinemus ergo simul omnes id agere, ne ira Dei descendat super nos, tamquam super negligentes pastores et desides; ne reputemur canes muti, non valentes latrare; ne exprobretur nobis a transeuntibus, "A senioribus Babylonis egressa est iniquitas." Revera si me audieritis, scitote quoniam Dominus erit vobiscum, et cum omnibus vobis in cunctis viis vestris ad faciendam pacem et defendendam ecclesiæ libertatem. Alioquin judicet Deus inter me et vos, et ecclesiæ confusionem requirat de manibus vestris. Quoniam, velit, nolit mundus, necesse est ipsam stare firmiter in verbo Domini, in quo fundata est, donec veniat hora ejus, ut transeat de hoc mundo ad Patrem. Judicabit Deus de eo, quod reliquistis me solum in certamine, nec est qui velit mecum ascendere ad pugnam ex omnibus charis meis: Solum adeo, ut cogitet quilibet vestrum vel dicat, "Vae soli; quia, si ceciderit, non habet sublevantem se." Sed reposita est mihi hæc spes mea in sinu meo, quoniam solis non est cum quo Dominus est, qui, cum ceciderit, non collidetur: supponit enim ipse Dominus manum suam.

Ut itaque veniamus ad rem, dicite, patres mei, exciditne à vestra memoriâ, quid ageretur mecum, et cum ecclesiâ Dei, dum adhuc essem in Anglia; quid in exitu meo, quid post exitum, quid etiam agatur diebus istis; quid maxime apud Northamptonam, cum iterum judicaretur Christus in personâ meâ ante tribunal Præsidis; cum arctaretur Cantuariensis, ob injurias sibi et ecclesiæ Dei passim illatas, et sine delectu, Romanam audientiam appellare; bona sua, quæ malè dicimus sua, cum sint bona pauperum, patrimonium crucifixi, quæ potius ei sunt commendata quam donata, sub Dei ponere protectione et ecclesiæ Romanæ? Quis unquam, etsi aliquando injustè proscriptum divina declaravit clementia, vidit, audivit, Cantuariensem judicari, condemnari, cogi ad fidejussionem

in curiâ regis, à suis præcipuè suffraganeis? Ubi est inventa ista juris vel canonum autoritas adversa, immò perversa perversitas? Ut quid enormitas ista non parit vobis erubescencia non immittit confusionem, confusio non elicit pœnitentiam, pœnitentia non excutit satisfactionem coram Deo et hominibus? Ob tot quidem et tantas Deo et ecclesiæ ejus illatas injurias immo mihi propter Deum, quas sultinere non debui salvâ conscientia meâ, nec sine discrimine vitæ meæ potui emendare, nec dissimulare sine animæ periculo, eligi potiùs declinare ad tempus, ut habitarem salubrius in domo Domini quam in tabernaculis peccatorum, donec completa esset iniquitas, revelarentur corda iniquorum,, manifestarentur cogitationes cordium. Ita tot injuriarum illatio fuit causa appellationis meæ. Hæc fuit occasio recessûs mei, quem dicitis inopinatum, qui magis, secundum ea quæ proponebantur adversum me, quæ agebantur mecum, si veritatem loquimini qui novistis debuisset fuisse inopinatus, nè impediretur præscitus. Sed Domino vertente casus adversos in melius, prospectum est Domini nostri Regis honori et suorum, ne quid fieret in me, in ipsius ignominiam et generationis suæ. Melius etiam consultum est iis qui suspirabant in necem meam, qui sitiebant sanguinem meum, qui adspirabant ad fastigium ecclesiæ Cantuariensis, ut vulgò dicitur et creditur, in nostram perniciem, utinam minus ambitione quam avide. Appellavimus et appellati sumus; rebus ecclesiæ Cantuariensis, nostrisque et nostrorum, sicut juris exigit ratio, in tuto manentibus, nostram prosecuti sumus appellationem. Si nobis recedentibus, et in discessu nostro, omnia turbato sunt, prout dicitis, sibi imputet qui causam dedit, qui hoc procuravit. Facientis proculdubio culpa hæc est, non recedentis; persequentis, non declinantis injurias. Damnum enim dedisse videtur qui causam damni dedit. Quid plura? Præsentavimus nos curiæ, nostras et ecclesiæ exposuimus injurias, adventûs nostri causam et appellationis exposuimus: non adfuit qui nobis responderet vel in aliquo. Expectavimus, nec venit qui nobis aliquid objiceret. Nulla adversum nos reportata sententia, antequam veniretur ad Regem, nobis adhuc de more expectantibus in curiâ, si forte nobis aliquid exponeretur: ad nostros accessum est officiales; interdictum est eis, ne in aliquo super temporalibus nobis obedirent, ne nobis vel nostris quidquam ministraretur ab ipsis citra mandatum regis et conscientiam; te, frater Londoniensis,

cum Richardo de Welcēster et Eboracensi, sicut dicitur, dictante sententiam. Festinatum est inde ad Dominum Regem. Viderit ipse, in caput ejus convertatur, qui hoc dedit consilium. Sine judicio, sine ratione, post appellationem, nobis etiam adhuc in curia morantibus, spoliata est ecclesia, spoliati sumus et nos cum nostris, proscripti et ipsi clerici cum laicis, viri cum mulieribus, mulieres cum infantibus in cunabulis. Addicta sunt fisco bona ecclesiarum, patrimonium crucifixi: Pars pecuniæ conversa in usus regios, pars in tuos; frater Londoniensis, si vera sunt quæ audivimus, et tuæ ecclesiæ. Quam, si ita est, exigimus à te, præcipientes tibi in virtute obedientiæ, quatenus, intra quadraginta dies post istarum susceptionem litterarum, quidquid inde tulisti, vel in usus ecclesiæ tuæ conversum est, remotâ omni occasione et dilatione, infra tempus prænominatum nobis integrum restituas. Iniquum enim est, et juri valde contrarium, ecclesiam ditari de alterius ecclesiæ incommodo. Si laudas auctorem, scite debes, super rebus ecclesiæ ablatis, eum legitime non posse præstare auctoritatem qui violentam facit injuriam.

Quo ergo jure perverso, quo canonum ordine transposito, poterunt se tueri raptores sacrilegi, bonorum ecclesiasticorum invasores non restitutos ablatis ecclesiæ? Opponentne appellationis obstaculum? Absit. Quæ nova, immo quæ juri contraria introducitis in ecclesias istas? Videte quid agatis. Certe excutitur in vos faba ista, et in ecclesias vestras, si non melius vobis prospexeritis. Periculose enim ageretur cum ecclesiâ Dei, si raptor sacrilegus, alienorum bonorum invasor, maxime ecclesiæ, tutus esset adversus eam appellationis auxilio. Frustrâ enim jure implorat auxilium qui juri non obtemperat, immo qui est juri contrarius: Sunt ne istæ injuriæ quas addimus injuriis, labores quos laboribus adjicimus, quia ista et alia enormia, quæ fiebant et quæ fiunt in ecclesiâ istâ, non sustinuimus, quia gravati appellavimus, quia recessimus a curiâ, quia aucti sumus super injuriis ecclesiæ et nostris conqueri, et super his omnibus non tacemus, quia ista paramus corrigere? Periculose certe affligitur cui saltem conquerendi solatium negatur. Vos, amici mei, qui aliora sapitis inter alios, qui geritis vos aliis prudentiores, quoniam solent filii hujus sæculi prudentiores esse filiis lucis, ut quid decipitis fratres vestros et subditos? Quare inducitis eos in errorem istum? Quæ auctoritas, quæ scriptura, contulit hanc principibus prærogativam in eccle-

ecclesiasticis, quam vos vultis eis conferre? Nolite, fratres, nolite jura regni et ecclesiæ confundere. Discretæ quidem sunt potestates istæ, quarum una vim et potestatem fortitur ex aliâ. Legite scripturas, et invenietis quot et qui periëre reges, qui nisi sunt sibi sacerdotale officium usurpare. Provideat ergo vestra discretio, ne ob istam pressura divina vos atterat injuriam; quam, si venerit, non effugietis de facili. Consulite etiam Domino nostro Regi, qui ejus comparatis gratiam ecclesiæ dispendio, ne, quod absit, pereat ipse, et domus ejus tota, sicut periëre qui in consimili deprehensi sunt delicto. Si vero ab hoc incepto non desisterit, quâ animi conscientia non puniemus ista, quâ puritate conscientia ista dissimulabimus? Dissimulet quidem qui hanc habet dissimulandi auctoritatem; non ego, ne veniat in animam meam ista dissimulatio. Innuitis literis vestris, immo apertè dicitis, me, regno reclamante, ecclesiâ etiam suspirante et ingemisciente, fuisse promotum. Scitis quid dicat veritas? "Os, quod mendacium scienter loquitur, occidit animam." Verba verò sacerdotis semper comitem debent habere veritatem. Deus bone, nunquid erubesceret aliquis de plebe ita dicere? Consulite conscientias vestras, advertite formam electionis, consensum omnium ad quos spectabat electio, assensum principis per filium suum, et eos qui ad hoc missi sunt filii etiam cum omnibus primatibus regni. Si aliquis eorum contradixit, si reclamavit vel in aliquo, loquatur qui noverit, dicat qui est conscius. Si verò inde turbatus fuerit aliquis, non dicat pro suâ molestia toti regno et ecclesiæ factam fuisse injuriam. Literas quoque Domini Regis, et omnium vestrâ diligentius attendite, postulantes nobis cum multâ instantiâ pallium, et obtinuisse. Sic se habet rei veritas. Verum, si quem torset invidia, si quem afflixit ambitio, si cui tam pacifica, tam legitima, tam sine contradictione facta electio dolorem et amaritudinem impressit animi, eatenus ut ob hoc machine-tur et velit turbare omnia, indulgeat ei Dominus et nos, eò quod culpam suam minime taceat, suamque animi indignationem in conspectu omnium publice confiteri non erubescat.

Dicitis me de exili sublimatum ab ipso in gloriam. Non sum reverà *atavis editus regibus*. Malo tamen is esse, in quo faciat sibi genus animi nobilitas, quam in quo nobilitas generis degeneret. Fortè natus sum de paupere tugurio! Sed, cooperante Divina Clementia, quæ novit facere

facere misericordiam cum servis suis, quæ eligit humile ut confundat fortia, in exilitate mea, antequam accederem ad ejus obsequium, satis copiosè, satis abundanter, satis honorificè, sicut ipsi novistis, prout abundantius inter vicinos meos et notos, cujuscumque conditionis fuerint, conversatus sum. Et David, de postfœtate assumptus, constitutus est ut regeret populum Dei; cui aucta est fortitudo et gloria, quoniam ambulavit in viis Domini. Pëtrus verò, de arte piscariæ electus, factus est ecclesiæ princeps, qui sanguine suo meruit pro nomine Christi in cœlis habere coronam, et in terris nomen et gloriam. Utinam et nos similiter faciamus. Successores enim Petri sumus, non Augusti. Novit Dominus, quo intuitu nos ipse desideravit sublimari. Respondeat ei sua intentio, et nos respondebimus ei pro officii nostri debito, fidelius, per misericordiam Dei, in severitate, quam qui blandiuntur ei in mendaciis. Meliora enim sunt verbera amici, quam fraudulenta oscula inimici.

Impingitis nobis ingratitudinis notam per quamdam insinuationem. Credimus quia nullum peccatum criminale est, qui importet infamiam, nisi processerit ex animo. Unde, si quis homicidium invitus commiserit, etsi homicida dicatur et sit, non tamen homicidii reatum incurrit. Sic dicimus: Etsi Domino nostro Regi obsequium debeamus jure Domini, si ad reverentiam præstandam jure Regio, si Dominum sustinuimus, si filium paterno affectu convenimus, si in conventum, non auditi et dolentes, necessitate officii, censuram servitatis exercemus, plus credimus nos pro ipso facere, et cum ipso, quàm contrà ipsum; plus ex eo promereri gratiam, quàm ingratitudinis notam, vel pœnam. Sæpissimè certè beneficium confertur invito. Unde commodius ejus prospicitur indemnitati, qui, etsi non aliàs, urgente necessitate revocatur a perpetratione delicti. Præterea defendit nos ab ingratitudinis notâ Pater noster et Patronus, qui est ipse Christus. Jure Paterno tenemur ad ejus obedientiam, quâ non observatâ puniemur justâ exhæredationis pœnâ. Potest enim Pater exhæredare filium ex iustâ causâ. Ipse enim dicit, "Si non annuntiaveris impio iniquitatem suam, et moriatur in delicto suo, sanguinem ejus de manu tua requiram." Ergo si delinquentem non convenimus, si non audientem non corripimus, si pertinacem non coercemus, committimus in mandatum, et tanquàm inobedientiæ rei jure exhæredamur. Jure patronatûs, quo ejus sumus liberi,

liberi, quoniam, cum essemus servi peccati, facti sumus liberi justitiæ per ejus gratiam, obligamur ei ad reverentiam et obsequium. Unde quoniam nemini, nisi salvæ ejus fide, tenemur obnoxii, si sit contra eum, in dispendium ecclesiæ, pertinaciter, meritò, si non punimus commissum, pro eâ parte sollicitudinis in quam vocati sumus, collatum revocabit à nobis ob ingratitudinem ipse solus beneficium, ex quo verè apparebimus ingrati.

Proponitis nobis periculum ecclesiæ Romanæ, jacuram temporalium, periculum quidem nostrum et nostrorum: nec fit mentio de periculo animarum. Intentatis etiam comminatorium de recessu Domini Regis, quod absit, a fidelitate et devotione Romanæ ecclesiæ. Absit, inquam, ut Domini nostri Regis devotio et fides, ob temporale commodum vel incommodum, à fidelitate et devotione discedat ecclesiæ. Quod quidem criminale et damnabile esset in privato, nedum in principe, qui multos secum trahit post se. Absit etiam, quod quis ejus fidelis hæc unquam cogitare debeat, nedum dicere subiectus aliquis, nedum episcopus. Videat discretio vestra, ne oris vestri verba inficiant aliquem, vel plures; in animæ suæ dispendium et damnationem, ad instar calicis aurei, qui dicitur Babylonis, interius et exterius veneno illiniti, de quo cum quis biberit, non timeat venenum, cum viderit aurum, et sic in publicum veniat vestri operis effectus. Ille enim, qui non fallitur, opus furtivum producit in lucem et machinationes demodat iniquas. In tribulatione quidem et sanguinis effusione consuevit ecclesiæ crescere et multiplicari. Proprium enim est ecclesiæ, ut tunc vincat cum læditur tunc intelligit cum arguitur, tunc obtineat cum deseritur. Nolite ergo, fratres, super ipsam flere, sed super vos ipsos, qui facitis vobis nomen, sed non grande, ex hoc facto et dicto ex ore omnium; qui provocatis in vos Dei odium et universorum; qui paratis innocenti laqueum, qui cuditis novas et ingeniosas rationes in subversionem libertatis ecclesiæ. Fratres, per misericordiam Dei, in vanum laboratis. Stabit enim ipsa ecclesiæ, etsi sæpius concussa, in eâ fortitudine et firmitate, in quâ firmiter fundata est, donec filius ille perditionis surgat, quem non credimus de partibus occidentalibus adscensurum, nisi perverse mutatus fuerit ordo rerum, et series scripturarum. Si verò de temporalibus agatur, plus timere debemus animæ periculum, quam temporalium. Scriptura verò dicit, *Quid prodest homini totum mundum lucrari,*
animæ

animæ verò suæ, sustinere dispendium? Periculum itaque nostrum et nostrorum penitus abijcimus. Non enim timendus est ille qui corpus perdit, sed qui corpus et animam.

Arguitis nos super suspensione venerabilis fratris nostri Saresberiensis episcopi, et excommunicatione Joannis illius schismatici ex-decani, prius, ut dicitis, inflicta pœnaliter, quam de cognitione processa legitime, quam de ordine judiciorum canonicè prodita. Respondemus quoniam utrumque istorum notavit iusta pœnæ sententia, illum suspensionis, excommunicationis istum. Si perfecte tenetis negotii seriem, si recte attenditis judiciorum ordinem, non erit, ut credimus, hæc vestra sententia. Hoc quidem habet auctoritas, quæ vos latere non debet, quoniam in manifestis et notis non desideratur ista cognitio. Perpendite diligentius, quid actum sit à Saresberiensis super decanatu post domini papæ prohibitionem et nostram, sub excommunicatione factam, et tunc rectius intelligetis, si de manifesta inobedientia suspensio rectè sequitur. Unde beatus Clemens; *Si prælatis suis non obedierint cujuscumque ordinis universi, omnesque principes tam inferioris quam superioris ordinis, atque reliqui populi, non solum infames, sed etiam extorres a regno Dei, et consortia fidelium, et à liminibus sanctæ Dei ecclesiæ alieni erunt.*

De Joanne de Oxenford dicimus, quia diversis modis excommunicantur diversi: Alii lege eos denunciante excommunicatos, alii sententiâ notati, alii communicatione et participatione excommunicatorum. Illum verò, quoniam incidit in hæresim damnatam communicando schismaticis, et domini papæ excommunicatis, reatumque et maculam excommunicationis in se contraxit, quæ pestis, more lepræ, inficit et intingit, consimilique pœnâ facientes et consentientes confundit; et quoniam contra domini papæ mandatum expressum, et nostrum, sub anathemate, decanatum Saresberiensis, excommunicatus usurpavit, denunciavimus, et excommunicavimus, et excommunicatum firmiter tenemus. Et quod de eo factum est in decanatu, et super decanatu, cassavimus et cassatum tenemus, sicut et dominus papa jam ipsemet cassavit auctoritate octavæ synodi, cujus hæc est sententia: *Si quis palam vel abscon- se cum excommunicatio locutus fuerit, aut junctus communione, statim in se contrahit excommunicationis pœnam.* Et concilium clarè dicit: *Qui communicaverit cum excommunicato, si clericus est, deponatur.* Videat ergo discretio vestra, ne quis vestrum cum eo communicaverit Calixtus enim

enim Papa dicit : *Excommunicatos quosque a sacerdotibus nullus recipiat ante utriusque partis examinationem iustam, nec cum eis in oratione, aut in cibo aut potu, aut osculo communicet, aut ave eis dicat. Quia quicumque in his vel aliis prohibitis scienter excommunicatis communicaverint, iuxta Apostolorum institutionem simili excommunicationi et ipsi subiacebunt.* Hic est ordo canonicus, non canonibus, ut credimus, incognitus, sed autoritate canonum fultus.

Et ne miremini, si quandoque condemnantur absentes. Legite Paulum, qui abiens publicè fornicantem cum fornicaria sua, non convictum testibus, non confessum, etiam absentem, cujus crimen omnes sciebant, et non arguebant, sicut vos istius, quem non de jure defendit regia potestas, ejecit a coetu fidelium, et judicavit eum tradi Sathano in interitum carnis, ut spiritus salvus fieret, sicut nos istum. Cæterum quoniam hoc tempore in partibus nostris multa hujusmodi, et satis gravia, in absentia nostra fiunt enormia, quæ de cætero, sicut absentes corpore, presentes tamen autoritate, salvâ animi nostri conscientia, præterire non debemus, nec possumus, incorrecta, tibi, frater Londoniensis, qui nôsse debueras illud Gregorii septimi, *Si quis episcopus fornicationi presbyterorum aut diaconorum, vel crimini incestus, in sua parochia, pretio, precibusve, sive gratia interveniente consenserit, vel commissum auctoritate sui officii non impugnaverit, a suo suspendatur officio.* Illudque Leonis: *Si qui episcopi talem consecraverint sacerdotem, qualem esse non liceat, etiam si aliquo modo damnum proprii bonoris evaserint, ordinationis jus ulterius non habebunt, nec ulli unquam sacramento intererunt, quod immèrito præstiterunt.* Quoniam in istorum sententiam canonum, sicut pro certo audivimus, deliquisti dupliciter, mandamus tibi, et in virtute obedientiæ mandando injungimus, quatenus, si ita est, infra tres menses post istarum susceptionem literarum, venerabilium fratrum vestrorum cœpiscoporum consilio, de tanto excessu sic studeas te offerre correctioni et satisfactioni ne cæteri tuo exemplo in consimile delictum incidunt, et nos pro negligentia tuâ debeamus tibi severiùs mandatum proponere.

Opponitis nobis contra metum gravaminum, non remedium per appellationem, sed impedimentum, quominus, sicut intelligimus, exerceamus adversum malefactores, invasores bonorum ecclesiasticorum, disciplinæ censuram ecclesiasticæ; ne in dominum nostrum regem vel terram suam, in personas vestras et ecclesias, aliquid statueramus.

amus eo ordine, quo progressi sumus contra Saresberiensem, sicut dicitis, et ejus decanum. Absit à nobis, ut aliquid in eum vel terram suam, in vos et ecclesias vestras, inordinate statuerimus vel statuamus. Sed quid est, si eo delinquitis modo, vel consimili, quo jam deliquit Saresberienfis, numquid hac appellatione potestis suspendere auctoritatem nostram, ne in vos vel ecclesias vestras severitatis disciplinam exerceamus, si delicti enormitas hoc exiget? Advertite diligentius, si hæc legitima appellatio, et quæ sit hæc appellationis forma. Scimus quoniam omnis appellans aut suo nomine appellat, aut alieno. Si suo, aut à gravamine quod ei infertur, vel quod timet sibi inferri. Certum tenemus, quod nullum vobis gravamen, Deo gratias, a nobis illatum est, unde debeatis ad appellationis confugere remedium. Nec credimus vos ad præsens habere causam adversum nos aliquam, quæ specialiter vestra sit. Si contra metum gravaminum, ne quid de cætero statutum in vos vel ecclesias vestras, videte si sit iste metus qui debeat cadere in homines constantissimos; si hæc sit appellatio quæ debeat suspendere omnem auctoritatem et potestatem nostram, quam habemus in vos et ecclesias vestras. Creditur verò a sapientibus, credimus et nos, eam nullius esse momenti tum quia formam appellationis habere non videtur, tum quia rationi consentanea non est, immò totius juris auxilio destituta.

Si alieno appellastis nomine, aut Domini Regis, aut alterius. Sinon alterius, Domini Regis. Si Domini Regis, certe nōsse debuerat discretio vestra quoniam introductæ sunt appellationes ad propulsandam injuriam, non ad inferendam; ad sublevandos oppressos, non ad amplius opprimendos. Unde si quis, non confidentiâ justæ causæ, sed causâ afferendæ moræ, ne contra eum feratur sententia, appellaverit, hujusmodi appellationem non esse recipiendam. Quis enim erit ecclesiæ status, si, subversâ ejus libertate, si, rebus ejus occupatis ac detentis, episcopis à propria sede expulsis, vel non pacificè cum omni securitate omniumque ablatorum restitutione admisissis, raptōres, occupatores, invasores, ne coërceantur, libere appellaverint, et se defenderint per appellationem? Quæ erit ista ecclesiæ dedestructio? Videte quid agatis, quidque dicatis. Nonne vicarii Christi estis, nonne vices ejus in terra geritis, nonne vestrum est convenire, corripere, coërtere malefactores, ut vel sic desistant ecclesiam Dei persequi? Ut quid non nimis est, si ipsi sævierint in ecclesiam, nisi et nos,

hos, pro eis, vobis ipsis et ecclesiæ in ejus perniciem oppo-
natis? Quis unquam audit hęc mirabilia? Et audietur
et prædicabitur in omni populo et gente, suffraganeos Can-
tuariensis ecclesiæ, qui cum metropolitano suo, ob defensionem
ecclesiæ ejusque libertatis, deberent vivere et mori,
omniaque sustinere dispendia, velle ad mandatum regium,
quantum in ipsis est, suspendere potestatem ipsius et autho-
ritatem, ne severitatis disciplinam exerceat in delinquentes
adversus ecclesiam. Unum certè scio: Duorum personam
simul gerere non rectè potestis, appellantium et appellato-
rum. Vos estis qui appellastis, vos estis adversum quos
appellatur. Nonne una est ecclesia, et vos de corpore ejus
estis? En certamen satis legitimum, satis canonicum, ut
qui membra sunt ecclesiæ ineant certamen cum capite suo,
quod est Christus. Timeo, fratres, ne, quod absit, di-
catur de vobis, *Ipsi sunt sacerdotes qui dixerunt, ubi est
Dominus? Et tenentes legem nescierunt eam.* Præterea
discretionem vestram latere non credimus, quoniam non
solent audiri appellantes, nisi quorum interest, aut quibus
mandatum est, aut qui negotium gerunt alienum. Inter-
estne vestra, ut non coërceantur delinquentes adversus
ecclesiam? Absit. Immò certe contrarium. Si verò qui
subvertit ecclesiæ libertatem, qui bona ipsius invadit et oc-
cupat, ac in suos convertit usus, in sui defensionem mini-
mè super hoc auditur appellans, multò minus et pro eo
appellantes. Ergo nec Domino Regi suffragatur à vobis
pro ipso edita, nec videtur vobis prodesse pro ipso appella-
tio emissæ. Unde si in hoc casu appellare non potest,
nec mandare, sic nec vos super hoc ab ipso mandatum sus-
cipere. Adjicimus etiam vos in parte istâ nullatenus ejus
gerere posse negotium. Nemo enim episcoporum alterius
contra se negotium gerere potest, maxime in oppressione
ecclesiæ, cujus ipse defensor est; et præsertim unde gene-
raliter læditur ecclesiæ conditio. Ergo si nec vestra in-
terest appellare, nec super hoc mandatum valetis suscipere,
nec alienum gerere negotium, nec auditur appellatio
vestra, nec de jure tenetur. Est-ne ista devotio, consolatio
vestra, paternæ charitatis affectus metropolitano vestro,
pro vobis omnibus exulanti, a fraternitate vestrâ exhibi-
tus? Indulgeat vobis Deus hanc inclementiam. An ig-
noratis, fratres, quòd chaos magnum, in fraudem legis
et canonum, inter nos et vos firmatum sit, ut non possit
aliquis de nostris sine discrimine capitis, vel captionis trunca-
tionis membrorum, ad vos transire; etsi de vestris aliqui libe-
rius

rius possunt, si vellent, ad nos transire? Et idcirco miramur, quem ordinem exigitis, ubi nullus ordo circa nos, circa ecclesias vel ecclesiasticas personas, sed horror, qui utinam sempiternus non sit, et injuriæ observantur; cum spoliati simus, et nostri. Quorum quidam, tam clerici quam laici, capti, redempti sunt post appellationem factam apud Northampton, et vestram adversum nos. Cum etiam, post istam, quam dicitis, appellationem, edictum generale sit propositum, sicut dicitur, ut nemo de nostris inventus sit in terrâ Anglicanâ, qui non capiatur; nemo vestrum vel aliorum amicorum nostrorum literas nostras vel nuncios audeat suscipere. Est hæc reverentia appellationi debita, exhibita, et observata, infra cujus tempus, si iusta est, nil innovari oportet: Vos ipsi videritis. Quo ergo jure, quo ordine desideratis à nobis literas vestras et nuncios benignè suscipi et audiri? Non hoc ideo dicimus, quidquid nobiscum agatur et cum nostris, ut quidquam circa personam Domini Regis vel terram suam, circa personas et ecclesias vestras unquam inordinatè fecerimus, vel per Dei misericordiam facturi simus.

Credebamus quidem, si rectè intelligitis, si cupitis utiliter ecclesiæ subvenire, de nimis ordinatâ et longâ patientiâ magis à vobis culpari, quam de severitatis morâ commendari. Mora enim trahit ad se periculum. Quia nimis ordinata patientia plus habet remissionis quam commendationis, plus vitii quam virtutis. Et inde est, quod breviter vobis dicimus et affirmamus constanter, Dominum nostrum Regem nullatenus fore injustè gravatum, si adversus eum, à Domino Papâ et à nobis ipsis, legitime literis et nuntiis ac sæpissimè conventum, satisfacere, cum possit, nolentem, severitatis censura processerit. Non enim injustè gravatur, quem jus punit legitime. Et ut omnia brevissimo fine concludam, certum tenete, quoniam raptores, invasores, occupatores bonorum ecclesiæ, ejusque libertatis subversores, nec tuetur juris autoritas, nec appellatio defendit. Prætereâ, fratres, si cupitis ei prodesse, prout iustum est, quod et nos cupimus, novit Deus, qui scrutator est cordium, procurete ei subvenire illo modo, quo non offendatis in Deum, non in ecclesiam, non in ordinem vestrum; quo etiam expeditius et salubrius animæ suæ periculum, quod jam in foribus est, valeat evadere. Hæc idcirco diximus, si, inspirante ei divinâ clementiâ, de consilio vestro satisfecerit ecclesiæ, gaudebit ipsa de filii sui reversione, et cum gratiarum actione et devotione multiplici paratâ
fuit

fuit et est semper eum suscipere. Gaudebimus et nos. Judicium verò vestrum, quo dicitis eum satisfacere vobis, quo dicitis eum satisfacere volentem, paratum etiam fatidare, si super aliquo de libertatibus ecclesiæ inter ipsum et nos, sicut dicitis, orta est contentio, quod quidem satis miramur si alicui vestrum hoc est in dubium, cum toti fere mundo sit notum; quoniam non est consentaneum rationi, immò penitus juri contrarium, si non suscipimus, immo quia non suscipimus, in quo delinquimus? Estne causa ista sufficiens, estne peremptoria, quo minus sæpissime et canonice conventus, non satisfaciens, injurias superaddens injuriis, severitate divina coerceatur? Absit. Scimus enim vos nullâ ratione in hac causâ judicis officio inter ipsum et nos fungi posse. Jam quia adversarii ejus estis et esse debetis in eâ ob defensionem libertatis ecclesiæ, cujus partis defendendæ, officii vestri necessitate, cura vobis commissa est, et sollicitudo credita: Quam si negligenter omittitis, si periculose dissimulatis, vos ipsi videritis. Tum quia non legimus superiores ab inferioribus, metropolitanos maxime à suis suffraganeis, judicari posse. Tum quia nobis et ecclesiæ quidam vestrum suspecti sunt, utinam non omnes! diversis rationibus, quas in præsentia tacemus.

Audiat itaque Dominus meus postulationem fidelis sui, consilium episcopi, patris exhortationem, ut beneficiat ei Deus, et augeat dies ejus, et annos filiorum ipsius in tempora longa. Permittat ecclesiam frui pace et libertate sub ipso, tanquam sub Rege Christianissimo; ecclesiam Romanam uti jure et libertate in terrâ suâ, quam habere debet, et habet in cæteris regnis. Restituat Cantuariensi ecclesiæ et nobis jura sua et libertates, et omnia ablata cum pace et securitate nostrâ, ut liberè et quietè possimus Deo militare sub ipso, et ipse debeat obsequio nostro uti, prout ei placuerit, salvo honore Dei et ecclesiæ Romanæ, et ordine nostro. Istæ sunt dignitates Regiæ, leges optimæ, quas petere debet Rex Christianissimus et observare; quibus gaudere debet et sub ipso florere ecclesia. Istæ sunt leges obtemperantes legi Divinæ, non derogantes, quas qui non observaverit, inimicus Dei constituitur. *Lex enim Domini immaculata, convertens animas.* De legibus enim suis dicit Dominus, *Leges meas custodite.* Et propheta, *Væ qui condunt leges iniquas, et scribentes scripserunt injustitias, ut opprimerent pauperes in judicio, et vim facerent causæ humilium populi Dei.* Non erubescat

ergo Dominus meus redire ad cor, humiliari in cordis contritione et humilitatis mansuetudine coram Domino, satisfacere ei et ecclesiæ ipsius de illatis injuriis. Cor enim contritum et humiliatum Deus non despicit, sed amplectitur sincerius. Sicut et Sanctus David, quid cum peccasset, humiliavit se coram Domino, petivit misericordiam, et obtinuit veniam. Sic et Rex Ninive et civitas tota, cum interminata esset subversionis severitas, quoniam in cinere et cilicio humiliavit se Domino, mutatâ sententiâ meruit ultionis censuram contritione cordis et lachrymarum compunctione redimere.

Non hæc, fratres, vobis scribimus, ut facies vestras confundamus, sed ut lectis literis nostris et intellectis, valeatis et velitis officii vestri necessitates fortius et validius exercere. Opto vos de cætero semper melius agere, ut sit nobis pax celerior, et amplior libertas ecclesiæ. Orate pro nobis, ut non deficiat in tribulatione istâ fides nostra, sed et securè possimus dicere cum Apostolo, *Quia neque mors, neque vita, neque Angeli, neque aliqua creatura poterit nos seperare à charitate Dei, quæ subjecit nos tribulationi, donec veniat qui venturus est, qui faciet nobiscum misericordiam suam, et ducet nos in terram promissionis, terram fluentem lacte et melle, quam non dabit nisi diligentibus se.* Valete omnes semper in Domino; et instantius oret, petimus, pro nobis tota Anglicana ecclesiæ. *

* There are many faults in the printed Bruxelles Edition of the foregoing Letter, which have been mended here from the manuscripts, and particularly the Cottonian; but from the obscurity of some sentences I apprehend that some errors remain in all the copies that I have been able to consult.

N^o. VI.

*Ep. cviii. Lib. i. Tho. Cantuar. Archi-episc. Gilberto
Londoniensi Episcopo.*

Thomas Cantuariensis Ecclesiæ humilis Minister Gilberto This refers
Episcopo Londoniensi, quod semel hoc iterum, sic transire to B. 3. p.
per bona temporalia, ut non amittat æterna. 461.

MIRANDUM et vehementer stupendum, Virum prudentem, sacris literis eruditum, præsertim Religionem habitu præferentem, aded manifestè, ne dicam irreverenter, et timore Dei, postposito, averfari veritatem, justitiæ resistere, et ad omne fas nefasque confundendum, statum sanctæ Ecclesiæ, quam ipse fundavit Altissimus, velle avertere. Veritas est quæ dicit; *Portæ inferi non prævalebunt adversus eam.* Non sani igitur capitis esse dignoscitur, qui intentat ei ruinam; homini similis montem magnum fune circumligatum tentanti dejicere. Sed nunc quid iræ vel odio deferbui, ut exacerbatus jaculari compellar hujusmodi verba in fratrem meum, et collegam et coepiscopum meum? Absit. Sed de literis tuis, quas mihi per archi-diaconum tuum destinandis accepi, talia collegi. Neque enim de spinis uvas, aut ficus de tribulis colligere potui. Ut clareat an ita sit, proponamus eas, et continentiam earum in lucem proferamus. Finis collatus principio similitudinem scorpionis conformat: Illo blandiens ad nos ingreditur, illo pungens nos acerbè silentium nobis imponere machinatur.

Quid enim aliud est primò recognoscere debitam nobis subjectionem, et subjectioni cohærentem obedientiam promittere, demum, ne obedire debeas, ad appellationem convolare? Nunquid apud me sunt *est et non*, dicit Apostolus. Sed neque apud Apostoli deberent esse discipulum. Necessariò acceperunt discipuli a Domino potestatem calcandi super serpentes et scorpiones. Habitat enim Ezechiel et hodiè cum scorpionibus. Et illud vide quo sensu dixeris: *Ad appellationis remedium confugimus.* Christi sequelam te dicis: in hoc dict: secus inveniris. Omnium enim malorum nostrorum efficax, immo efficacissimum remedium commendavit nobis Christus obedi-

entiam, non solum verbo, sed evidentissimo exemplo, factus obediens patri suo usque ad mortem. Et in quâ fronte appellas remedium obedientiæ impedimentum? Quod non remedium, sed detrimentum rectius debet nominari. Sed et quâ fiduciâ hoc præsumis? sperasne te habiturum defensorem ad non obediendum illum, que vindicandi in omnem inobedientiam et officium accepit et præceptum? Malè est hoc sperare de eo, et in ipsum graviter offendere. Poterant te retardare ab hujusmodi præsumptione, quas jam passus es, prima et secunda repulsio. Viva quippe vox tua primum, et deinde literæ tuæ ad persuadendum compositæ, expertæ sunt quam firmiter stet, quàm sit vicarius Petri, quem non precibus, non donis, nec comminationibus, vel promissis, movere potuisti. Sed tertio attentandus est, ut Domini sui exemplo tertiâ attentatione triumphum reportet.

Porro, ut nihil deesset gravaminis, defixisti terminum tuæ appellationi anni ferè spatium: Nec misertus es nostri exilii, vel laboris sanctæ ecclesiæ, sponsæ Christi, quam ipse sibi suo sanguine acquisivit. Et, ut hæc omittam, non omittenda tamen, providere debueras, cui te favere dicis, Domino nostro Regi, qui quamdiu sic aget in nos, vel in ecclesiam Christi, nec ad bella procedere, vel in pace degere, sine animæ suæ periculo poterit. Ad reliqua transeamus. Quædam commemoras turbata esse in discessu et ex discessu nostro. Timeanturbationis hujus authores et consiliarii, ne et ipsi turbentur. Magnis me laudibus extollis, quasi de bono principio meæ peregrinationis. Est quidem sapientis famam non negligere, sed discreti est nulli magis de se quàm sibi credere. De injuriis infimulor, quasi illatis Domino nostro Regi. Sed, quia nullum designas ex nomine, nec ego scio cui respondere debeam. Quia igitur superficie tenus accusor, superficie tenus in hac parte me excuso. Hoc tamen interim accipe responsum, quia nullius mihi conscius sum, nec propterea justificatus sum. De comminatorio minaris, quod nos in eum misimus. Quis pater videt filium aberrare, et tacet? Quis virgâ non percutit, ne gladium incurrat? Desperat pater de filio, quem comminatione non corripit vel flagello? Absit autem ut tecum sentiamus Dominum nostrum Regem, impatientem correptionis, ad exterminationem Apostasiæ lapsurum. Non enim patris cælestis plantatio eradicabitur. Navem concutit sævissima tempestas: Clavum teneo, et ad somnum me vocas.

Congeris

Congeris et statuis ante oculos nostros beneficia nobis à Domino nostro Rege collata, et de exili me commemoras ad summa provectum. Ut autem his aliquantisper respondeam, in insipientiâ meâ tamen, de quâ exili, putas? si tempus, quo me in ministerio suo præstituit, respicias, archidiaconatus Cantuariæ, præpositura Beverlaci, plurimæ ecclesiæ præbendæ nonnullæ, alia etiam non pauca, quæ nominis mei erant possessio tunc temporis, adeo tenuem ut dicis, quantum ad ea quæ mundi sunt, contradicunt me fuisse. Quod si ad generis mei radicem et progenitores meos intenderis, civis quidem fuerunt Londonienses, in medio concivium fuorum habitantes sine querela, nec omnino infirmi. Sed ut aliquando, mundi tenebris semotis, judicemur à lumine veritatis, quid gloriosius, nasci de mediocribus vel etiam infimis, an de mundi magnatibus et honoratis; cum dicat apostolus, *Inbonestiora membra corporis nostri abundantiori circumdamus bonore?* *Stemmata quid faciunt*, ait gentilis poeta. Quid habet dicere christianus, episcopus, et religiosus? Sed fortassis de exiguitatis meæ memoriâ notam confusionis mihi objicere voluisti. Confundere vero Patrem quantum cedat in reatum ipse videris, ex præcepto, quod de honorando Patre accepisti.

Pro gratia vero Regis nobis commendanda, commemoratione beneficiorum ejus non multum fuit laborandum. Testem enim Deum invoco, nihil sub sole me gratiæ ipsius et saluti præponere: Tantum salva sint quæ Dei sunt et sanctæ ecclesiæ. Non enim aliter poterit feliciter regnare vel secure. Esto, quia ita est. Multo sunt plura, etiam ampliora, quam tua explicet oratio, beneficia ejus erga me. Debuine pro his omnibus, vel etiamsi centumplicarentur, ecclesiæ Dei libertatem exponere? Quanto minus pro famæ meæ, quæ sæpius à vero deviat, conservatione? Si minus in aliis egi, in hoc nec tibi nec alii parco, nec angelo, si descenderit de cælo; sed statim, ut audiero talia commonentem, audiet ex me; *Vade retro, Sathana, non sapiis quæ Dei sunt*. Absit à me ista dementia: Avertat à me Deus dementia istam, ut aliquatenus persuadeat aliquibus tergiversationibus inire commercium de Christi corpore, unde ego Judæ venditori, et Dominus meus Judæis assimiletur emptoribus Christi.

De promotione vero mea, quam scribis factam matre Domini Regis dissuadente, Regno reclamante, ecclesia, quoad licuit, suspirante, hoc tibi respondeo; Quod Regni

reclamationem non audivimus, sed potius acclamationem. Dissuasio vero genetricis Domini nostri, si fuit, usque ad publicum non prodiit. Potuit autem fieri aliquas ecclesiasticas personas, ad eandem promotionem, ut solet, adspirantes, suspirasse, cum se sentirent ab ea, quàm conceperant, spe decidere: Qui et hodie fortassis, in ultionem sui casûs, præsentis dissensionis authores sunt et consiliarii. Sed *væ illi, per quem scandalum venit.* Prætaxatis vero obstaculis, et aliis, si quæ fuerunt, Divina prævaluit dispensatio, ut est ipsa iustitia, nulli omnino eum postponere, qui me statuit in gradu isto sua miseratione.

Illud etiam, quod ad iustificandum Dominum Regem videris proposuisse, iudicavi non prætereundum leviter, vel absque discussione. Et utinam à iustitia non dissentiret, et nostra adversus eum minus iusta appareret querela. Dicis ipsum ad satisfaciendum semper fuisse paratum. Hoc te confidenter dicere, hoc te asseris prædicare. Sustine igitur paulisper, et ad interrogata responde. Illud quod dicis paratum ad satisfaciendum, quo sensu intelligis? Illos, quorum se Deus dicit patrem et iudicem, orphanos, pupillos, viduas, innocentes, et omnino, quæ nos movet controversiæ ignaros, vides proscribi, et taces; clericos exterminari, et non reclamationem; alios bonis suis spoliari et contumeliis affici, et non contradicis; servientes meos in vincula conjici et teneri, et obmutescis; matris tuæ Cantuariensis ecclesiæ bona diripi, et non resistis; me patrem tuum gladios cervici meæ jam jam imminentes vix evasisse, et non doles: sed quod deterius est, cum persecutoribus meis, et in me Dei et ecclesiæ ipsius, et hoc non in occulto, stare non erubescis. Estne hoc satisfacere, perpetrata mala non corrigere, et malis deteriora de die in diem adiacere? Sed fortassis illud in contrarium intelligis, ut sit hoc satisfacere, scilicet voluntati impiorum deservire, secundum illud; *Inebriabo sagittas meas sanguine.*

Sed dicis mihi: *Pater mi, de quibus me calumniaris, absolvo me paucis. Tunica meæ timeo.* Verum est, fili mi, et nimis verum respondes. Et ideo gladium non habes. Quod enim scribis, ipsum paratum stare iudicio Regni sui, quasi condigna satisfactio sit hæc, quis est in terra, vel etiam in cælo, qui de Divina dispositione præsumat iudicare? Humana iudicentur, Divina penitus inconcussa relinquantur. Quanto melius, frater mi, illi salubrius, tibi securius, intimares ei, et persuadere modis omnibus elaborares, voluntatem Dei, de conservanda pace ecclesiæ suæ,

suæ, de non appetendis his, quæ concessa non sunt ejus administrationi, de honorandis sacerdotibus Dei, nec qui sint attendat, sed cujus servi sint.

In Sarisberiensem episcopum, et Johannem de Oxenford, non decanum, ut dicis, sed decanatus infaustum, me præjudicio abusum calumniaris. Sed meminisse debuisti quædam manifesta præcedere ad judicium. Et motum te dicis. Quidni? *Ucalegon trepidat, paries cum proximus ardet.* Et utinam bene movearis ab eo, in quo non bene fecisti. Sciat ergo et intelligat, te intimante, Dominus meus, quia qui dominatur in Regno hominum, sed et angelorum, duas sub se potestates ordinavit: Principes et Sacerdotes; unam terrenam, alteram spiritualementem; unam ministrantem, alteram præminentem; unam cui potentiam concessit, alteram cui reverentiam exhiberi voluit. Qui vero his vel illis de suo jure subtrahit, Dei ordinationi resistit. Non indignetur itaque Dominus noster deferre illis, quibus summus omnium deferre non dedignatur, Deos appellans eos impius in sacris literis. Sic enim dicit; *Ego dixi, Dii estis, &c.* Et: *Constitui te Deum Pharaonis.* Et: *Diis non detrabes;* Id est, sacerdotibus. Et de eo qui jurgaturus erat, loquens per Moysen ait; *Applica illum ad Deos;* id est, ad sacerdotes. Nec præsumat Dominus noster judices suos velle judicare. Terrenis enim potestatibus non sunt commissæ claves Regni cælorum, sed sacerdotio. Inde scriptum est, *Labia sacerdotis custodient scientiam, et legem requirunt ex ore ejus, quia Angelus Domini exercituum est.* Paulus etiam dicit: *Nonne Angelos judicabimus? quanto magis homines?*

Illud etiam, te suggerente, commemoretur Domino nostro, dignum memoria et imitatione, quod in ecclesiastica historia legitur de Constantino imperatore, cui cum oblatae fuissent scripto actiones contra episcopos, accusationis quidem libellos accepit, et accusatos convocans in eorum conspectu eosdem incendit, dicens: *Vos Dii estis a vero Deo constituti: ite, et inter vos causas vestras disponite: quia dignum non est ut nos homines judicemus Deos.* O magnum imperatorem! O discrete regnantem in terra; quæ aliena sunt non usurpantem, et Regnum æternum in cælo promerentem! Studeat itaque Dominus Rex tantum, tam discretum, tam felicem imitari principem, cujus et memoria laudabilis frequentatur in terris, et vita perpetua ac gloriosa habetur in cælis. Alioquin timeat

quod in Deuteronomio Dominus minatus est, dicens ; *Homo quicumque fecerit in superbiâ, ut non exaudiat sacerdotem aut judicem, morietur.* Ad hoc enim vocatus est, et in hoc ipsum temporalis Regni pax, de qua nos commones, ministratur ei de cælo. Alioquin non salvatur Rex per multam virtutem suam, nec si subdantur ei Regna, et inclinentur nationes.

Sed hæc hæcenus. Quoscumque autem prætaxatarum habuisti conscriptores literarum, quod tibi responsum est noverint sibi esse responsum. De cætero, fratres, vos commonefacio, rogo, et obsecro, ut vos non separent schismata, nec obnubilent similitates ; sed sit vobis in Domino cor unum et anima una. Et audiamus illum qui dicit, *Pro justitia â agonizare pro animâ tuâ, et usque ad mortem certa pro justitia.* Et Deus expugnabit pro te inimicos tuos. Non obliviscamur illum districtum judicem, ante cujus tribunal constitutos sola nos veritas judicabit, amoto timore et fiducia omnis terrenæ potestatis. Valeat in Domino fraternitas vestra. *

NO. VII.

Articles sent over to England from the King, Ann. Dom. 1166. Cod. Cotton, p. 26. Cod. Vatic, p. 169.

This refers
to B. iii. p.
471;

SCIATIS hunc esse tenorem mandatorum, quem Henricus Rex misit in Angliam. Scilicet, ut omnes portus cautissime custodiantur, ne literæ interdictionis deferantur. Et si aliquis regularis illas attulerit, pedibus truncetur ; si clericus, oculos amittat et genitalia ; si laicus, suspendatur ; si leprosus, comburatur. Et si quis episcopus ejus interdictum metuens recedere voluerit, nihil secum deferat præter baculum. Vult etiam ut omnes scholares repatriare cogantur, aut beneficiis suis priventur ; et qui remanserint, sine spe remeandi remanebunt.

* To this Letter that of the Bishop of London, No. III. from the Cottonian Manuscript, was an Answer. It is transcribed from the printed Bruxelles Edition of Becket's Letters, and some Faults are corrected in it from other Copies.

Et Presbyteri qui cantare noluerint, genitalia amittent :
omnesque rebelles sibi omnibus beneficiis priventur.

N^O. VIII.

*Ep. cxxviii. Clerus Cantiae Provinciae Alexandro
Papæ.*

*Patri suo et Domino, summo Pontificiæ Alexandro, Provin-
ciæ Cantuariensis Episcopi, et Personæ per eorundem Dia-
ceses locis pluribus constitutæ, Domino Patrique debitum
charitatis et obedientiæ famulatum.'*

VESTRAM, Pater, meminisse credimus excellent-
iam, vos devotum filium vestrum, Dominumque
nostrum charissimum, illustrem Anglorum Regem, per
venerabiles fratres nostros, Londoniensem et Hereforden-
sem Episcopos, directis jam dudum litteris convenisse, et
de corrigendis quibusdam, quæ Sanctitati vestræ in ipsius
regno corrigenda videbantur, paterna gratia commonuisse.
Qui, mandatum vestrum debita veneratione suscipiens, ut
fatis notis notum est, ad vestra quidem monita non iratus
intumuit, non elatus obedire contempsit, verum a-
gens gratias paternæ correptioni, Ecclesiæ se statim sub-
misit examini, asserens de singulis, quæ juxta vestri form-
am mandati sibi diligenter expressa sunt, Ecclesiæ Regni
sui se parituro judicio, et quæ corrigenda decerneret,
ipsius se consilio, laudabili quidem et in principe dignè
commendabili devotione correcturum. Ab hoc verò non
recedit proposito, non mentem revocat à promisso. Sit
qui sedeat, qui cognoscat et judicet, divini reverentia ti-
moris, non majestatem præ se ferens, sed, ut filius obedi-
ens, judicio sistere, legitimæque parere sententiæ, et se
legibus alligatum principem præsto est in omnibus exhi-
bere. Unde nec interdicto, nec minis, nec maledictionum
aculeis, ad satisfactionem urgeri necesse est divinarum se
legum examini sponte subdentem. Ejus enim opera ne-
quaquam luci se subtrahunt, nec occultari tenebris ulla
ratione deprecantur. Rex namque fide Christianissimus, in
copula castimonie conjugalis honestissimus*, pacis et justitiæ
con-

This refers
to B. iii. p.
563.

* Mr. Carte has made use of this expression to prove a new opinion
of

conservator ac dilatator incomparabiliter strenuus, hoc votis agit, totisque in hoc fervet desideriis, ut de Regno ejus tollantur scandala, cum spurcitiis suis eliminentur peccata, pax totum obtineat atque justitia, et alta securitate et quiete placida sub ipso gaudeant et refloreat universa. Qui, cum pacem Regni sui enormi insolentium quorundam Clericorum excessu non mediocriter aliquando turbari cognosceret, clero debitam exhibens reverentiam, eorundem excessus ad Ecclesiæ Judices retulit Episcopos, ut gladio gladius subveniret, et pacem, quam regebat et fovebat in populo, spiritualis potestas fundaret et solidaret in Clero. *Quâ in re partis utriusque zelus enituit; Episcoporum in hoc stante judicio, ut homicidium, et si quid bujusmodi est, exauctoratione solâ puniretur in Clerico; Rege verò existimante pœnam hanc non condignè respondere flagitio, nec stabiliendæ paci bene prospici, si lector aut Acolythis quemquam perimat, ut solâ jam dicti ordinis amissione tutus existat* †. Clero itaque statuto cœlitus ordini deferente, Domino vero Rege peccatum justo, ceu sperat, odio persequente, et pacem altius radicare intendente, sancta quædam oborta est contentio, quam excusat, ut credimus, apud Dominum, simplex utriusque partis intentio. Hinc non dominationis ambitu, non opprimendæ Ecclesiasticæ libertatis intuitu, sed solidandæ pacis affectu, eo progressum est, ut Regni sui consuetudines et dignitates, Regibus ante in Regno Angliæ a Personis Ecclesiasticis observatas, et pacificè ac reverenter exhibitas, Dominus noster Rex deduci vellet in medium, et, ne super his contentiosus funis traheretur imposterum, notitiæ publicæ delegari. Adjuratis itaque per fidem, et per eam quæ in Deum spes est, majoribus natu, Episcopis, aliisque Regni Majoribus, retroacti temporis insinuatō statu, dignitates requisitæ palam prolatae sunt, et summorum in Regno virorum testimoniis propalatae. Hæc est Domini nostri Regis in Ecclesiam Dei toto orbe declamata crudelitas, hæc ab eo persecutio, hæc operum ejus perversorum rumusculis undique divulgata malignitas! In his tamen

of his own, that after Rosamond, King Henry the Second had no other mistress, and that the charge of incontinence, brought against him by all the contemporary writers, is not well founded. But I think it only proves, that, when this letter was written, he had no publick or scandalous amour.

† This paragraph states clearly the true subject of the controversy between Henry and Becket, and for what cause the latter died a Martyr.

omnibus,

- omnibus, si quid fuerit periculofum animæ, si quid ignominiofum Ecclefiæ, Regni fui fe confilio correcturum, devotione fanctiffimâ jamdiu eft pollicitus, et conftantiffimè pollicetur. Et quidem pacis optatum finem noſtra, Pater, ut ſperamus, obtinuiffet jam poſtulatione, ſi non iras jam ſopitas, et fere prorfus extinctas, patris noſtri Domini Cantuarienſis de novo fuſcitaffet exacerbatio. Verum hic, de cujus modeſtiâ redintegrationem gratiæ huc uſque ſperabamus, ipſum, quem monitis emollire, quem meritis et manſuetudine ſuperare debuerat, per triſtes et terribiles litteras, devotionem Pontificis patientiam minime redolentes, cum in pacis perturbatores exercitum nuper ageret, dure ſatis et irreverenter aggreſſus eſt; in ipſum excommunicationis ſententiam, in regnum ejus interdicti pœnam, comminando. Cujus ſi ſic remuneratur humilitas, quid in contumacem ſtatuetur? Si ſic æſtimatur obediendi prompta devotio, in obſtinatam perverſitatem quonam modo vindicabitur? Minis quoque gravibus ſuperaddita ſunt graviora. Quofdam namque fideles et familiares Domini noſtri Regis, primarios Regni proceres, Regiis ſpecialiter aſſiſtentes ſecretis, in quorum manu conſilia Regis et negotia Regni diriguntur, non citatos, non deſenſos, non, ut aiunt, culpæ ſibi conſcios, non convictos aut conſeſſos, excommunicationis innodavit ſententia, et excommunicatos publice denunciavit. Adjecit etiam ut venerabilem fratrem noſtrum, Dominum Saresberienſem Episcopum, abſentem et indefenſum, non conſeſſum aut convictum, ſacerdotali prius et Episcopali ſuſpenderit officio, quàm ſuſpenſionis ejus cauſa comprovincialium aut aliquorum etiam fuiſſet arbitrio comprobata. Si hic itaque judiciorum ordo circa Regem, circa Regnum, tam præpoſtere, ne dicamus inordinate, proceſſerit, quidnam conſequi poſſe putabimus, (Dies enim mali ſunt et occaſionem habentes malignandi quam plurimam), niſi ut tenor pacis et gratiæ quo Regnum et Sacerdotium uſque modo cohaerent, abrumptur, et nos cum commiſſo nobis Clero in diſperſionem abeamus exilii, aut a veſtra, (quod abſit!) fidelitate recedentes, ad ſchiſmatis malum in abyſſum iniquitatis et inobedientiæ provolvamur? Compendioſiſſima quippe via hæc eſt ad omne religionis diſpendium, ad Cleri pariter Populiſque ſubverſionem ac interitum. Unde ne Apoſtolatus veſtri tempore tam miſere ſubvertatur eccleſia; ne Dominus Rex et ſervientes ei Populi a veſtra, (quod abſit!) avertantur obedientia; ne totum, quod privatorum conſilio machinatur, poſſit in nos Domini Cantuarienſis

Cantuariensis iracundia, adversus eum et ipsius mandata, Domino nostro Regi aut Regno ejus, nobis aut commissis nobis Ecclesiis gravamen aliquod importantia, ad Sublimitatem vestram voce et scripto appellavimus, et appellationis terminum diem Adscensionis Dominicæ designavimus, eligentes apud vos in omne, quod Sanctitati vestræ placuerit, humiliari, quam ad sublimes animi ipsius motus, nostris non id exigentibus meritis, de die in diem tædiosissime prægravari. Conserve incolunitatem vestram, Ecclesiæ suæ in longa tempora profuturam, omnipotens Deus, in Christo dilectæ Pater.

Nº. IX.

MS. Cotton. Claudius, B. 2.

Fol. 142. Alexander Papa Henrico Regi Angliæ.

This refers
to p. 475.

MAGNIFICENTIÆ tuæ nuntios, scil. dilectos filios nostros Johannem Cumminum et magist. Radulfum de Tammworth, nobis et ecclesiæ Dei devotos et regiæ sublimitati per omnia sicut credimus fidelissimos, et litteras quas nobis Excellentia tua transmisit, tanto benigniori mente suscepimus, et tanto eos majori gratia prævenimus et honore, quanto plenius novimus ipsos a magnifico principe et Rege Christianissimo fuisse transmissos. Cui utique omnem, quam cum Deo possumus, gloriam cupimus et honorem, et ad cujus incrementum modis omnibus, quibus honeste poterimus nos et fratres nostri, ac tota Ecclesia, quanto devotissimæ sinceritatis tuæ affectum in majori sumus necessitate experti, tanto ardentius intendimus aspirare. Non enim tuæ devotionis insignia, nobis tempore tam opportuno exhibita, a nostra in posterum memoria ulla ratione poterunt divelli, vel in conspectu Ecclesiæ aliqua defuetudine inumbrari. Petitiones quoque tuas, quas nobis per nuntios jam dictos misisti, in quibus cum Deo et honestate nostra potuimus, sicut idem Magnificentie tuæ viva voce plenius narrabunt, curavimus executioni mandare. Personas siquidem de latere nostro juxta quod rogasti, licet nobis gravissimum ac difficillimum, hoc tempore maxime, aliquos a nobis emittere videatur, cum fratrum nostrorum, et eorum præsertim quos tu desideras, præsentia

præsentia et consilio opus habeamus; illius tam recolendæ ac magnificæ devotionis tuæ quam prædiximus non immemores existentes, ad Sublimitatis tuæ præsentiam duximus destinandas, cum plenitudine potestatis ecclesiasticas causas, quæ inter te et venerabilem fratrem nostrum Thomam Cantuar. Archiepiscopum hinc inde vertuntur, et illam quæ inter eundem Archiepiscopum et Episcopos Regni tui super appellatione ad nos facta movetur, necnon et alias causas terræ tuæ quas noverint expedire cognoscendi, judicandi quoque, et, prout sibi Dominus administraverit, canonice terminandi. Eidem quoque Archiepiscopo, ne te, aut tuos, seu regnum tuæ gubernationi commissum, donec causæ illæ debitum fortiantur effectum, in aliquo gravare, vel turbare, aut inquietare attemptet, omnimodis inhibuimus. Verum, si idem Archiepiscopus in te, aut regnum tuum tuæ gubernationi commissum, vel personas regni, interim aliquam sententiam tulerit, nos eam irritam esse et non tenere censemus. Ad iudicium autem hujus rei, in argumentum nostræ voluntatis, litteras præsentēs, si articulus ingruerit necessitatis, ostendas. Alioquin Serenitatem tuam rogamus et attentius commonemus, ut litteras ipsas, aut earum tenorem, a nullo sciri permittas, sed eas habeas omnino secretas. Illos vero familiares et consiliarios tuos, quos jam dictus Archiepiscopus sententiæ excommunicationis subjecit, personæ de latere nostro transmissæ, Domino auctore, absolvent. Si autem aliquis illorum interim metu mortis laboraverit, præstito secundum ecclesiæ consuetudinem juramento, quod nostro, si convaluerit, debeat super hoc parere mandato, ipsum ab aliquo episcopo vel alio religioso viro et discreto absolvi concedimus. Porro fratribus nostris, quos illuc mittemus, post instantem Domini nativitatem eundi præceptum dabimus, qui, auctore Domino, in mense Januario, iter, sicut credimus, agredientur. Data Lateran. XIII. Kalend. Januar.

N^o. X.

*Ep. XLV. l. ii. Alexandro Papæ Thomas Cantuariensis
Archiepiscopus.*

*Amantissimo Domino et Patri Sanctissimo Alexandro, Dei
Gratia Sanctæ Romanæ Ecclesiæ summo Pontifici, Thomas
Cantuariensis Ecclesiæ minister humilis, miser ac misera-
bilis exul, salutem, et inter omnia pericula firmam et ve-
ram obedientiam.*

This refers
to B. iii. p.
482, 483.

MITTIMUS Sanctitati vestræ latorem præsentium, pro conditione et capacitate, ut credimus, fidelem. Eum, si placet, pro nobis et de nobis, benigne exaudiat clementia vestra, prout decet et expedit miseræ nostræ, quæ jam amicis nostris desperatione facta est tædiosa, utinam non odibilis; vobis, unde magis dolemus, sicut plures judicant, dissimulatione manifesta non utinam contemptibilis; inimicis nostris etiam compassione miserabilis. Exurge, Domine, et noli tardare amplius. Illumina faciem tuam super nos, et fac nobiscum secundum misericordiam tuam, et cum miseris nostris præ nimia pressura deficientibus; salva nos, quia perimus. Non confundamur inter homines, non insultent nobis adversarii nostri, immo Christi et Ecclesiæ, non fiat fortuna nostra in derisum genti et populo, quia nomen tuum invocavimus super nos. Non nobis, Domine, non nobis, sed in nomine Domini Jesu-Christi, fac tibi grande nomen, repara gloriam tuam, revela famæ tuæ nomen, quæ in reversione illius excommunicati et perjuri schismatici, Joannem de Oxeneford loquor, falsa illius prædicatione in partibus Galliæ vehementer est depressa. (Novit Deus quia non mentior, et, si mihi non creditur, quærat ab his de Gallia, qui honorem vobis magis affectant, qui amplius optant ecclesiæ proventum) Famæ, dico, quæ hætenus apud homines vixit inculcata, quæ inter omnia pericula servata est illæsa, quæ cæteris perditis sola intemerata remansit, quæ ubique locorum sana habebatur et celebris. Resumat itaque vires præceptoris autoritas, reformet nobile factum, prius commendabile, sed male postea denigratum, ut sentiat garrulus ipse se falsa sparsisse, prædicasse mendacia. Experiatur severitatem

tatem qui remissionem demeruerat, perferat ultionem qui abusus est benignitate, ut agnoscat mundus eum reperisse Christi vicarium fundatum in firma petra, non facile mobilem, non baculum arundineum, sicut magni submurmurant, sed æquitatis et justitiæ observatorem, non acceptorem personarum, nemini parcentem in iudicio, de juris æquitate fideliter et æque dispensantem Regi pariter ac privato. Valeat Sanctitas vestra, ut valeamus et nos, et miseri nostri.

Nº. XI.

Rymeri Fædera, etc. Tom. I. p. 23, et seq.

Conventio facta apud Doverham inter Henricum Regem Angliæ et Henricum Filium ejus ex una parte, et Theodoricum Comitem Flandriæ et Filium ejus ex altera.

A. D. 1163. 1. **H**ÆC conventio facta est et scripta apud Doverham 14 Kal. April, inter Henricum Regem Angliæ, et Ducem Normanniæ et Aquitaniæ, et Comitem Andegaviæ, et Henricum Filium et Hæredem suum; et Theodoricum Comitem Flandriæ, et Comitem Philippum filium et hæredem suum. This refers to p. 498. l. 3.

2. Theodoricus Comes Flandrensis, et Comes Philippus, Filius et Hæres suus, fide et sacramento asscuerunt Regi Henrico, et Henrico Filio et Hæredi suo, vitam suam et membra quæ corporibus suis pertinent, et captionem corporum suorum, ne Rex vel Henricus Filius suus eam habeant ad dampnum suum.

3. Et quod juvabunt eos ad tenendum et ad defendendum Regnum Angliæ contra omnes homines qui vivere et mori possunt; salva fidelitate Ludovici Regis Francorum; ita quod, si Rex Lod. Regnum Angliæ super Regem Henricum, vel super Henricum Filium suum, invadere voluerit, Comes Theodor. et Comes Philippus, si potuerint, Regem Lod. remanere facient, et quærent quocunque modo poterunt, consilio et precibus, per bonam fidem, absque malo ingenio, sine datione pecuniæ, ut remaneat.

4. Et si Rex Lod. in Angliam venerit, et Comitem Theod. vel Comitem Philippum secum adduxerit, Comes Theod. vel Comes Phil. (uter eorum cum eo venerit) tam parvam

parvam fortitudine hominum secum adducet, quam minorem poterit, ita tamen, ne inde feodum suum erga Regem Franciæ forisfaciat.

5. Et, ante necessitatem, infra 40 dies postquam Comes Theod. vel Comes Phil. ex parte Regis Henrici, vel ex parte Henrici Filii sui, legato, vel literis suis, summonitus fuerit, idem Comes mille equites habebit ad portus suos, paratos transfretare in Angliam, in auxilium Regis Henrici, vel Henrici Filii sui, quam citius potuerint.

6. Et Rex Henricus vel Henricus Filius suus inveniet eis naves, et mittet eas vel ad Gravelingas, vel ad Witland.

7. Et tot naves mittet, quod sufficiant tot militibus, ita ut unusquisque habeat secum tres equos: Ita tamen, quod si Rex Henr. vel Henricus Filius suus, has naves simul una vice non miserit, milites remanentes de mille expectabunt ad portum, ab illa die, qua naves cum militibus de portu exibunt, usque ad totum unum mensem, nisi infra ipsum mensem transferint.

8. Et naves istas salvas faciet Comes Theod. vel Comes Phil. de omnibus suis, et de omnibus aliis hominibus, a quibus eas salvare potuerit, eundo, morando, et redeundo.

9. Et postquam dicti milites in Anglia erunt, fiducias facient Regi Henrico, vel Henrico Filio suo, aut legatis suis, (si requisiti fuerint) de hoc, quod, quamdiu in itinere illo in Anglia erunt, ad proficuum Regis Henrici et Henrici Filii sui erunt, et non quærent quomodo Rex vel Henricus Filius suus perdat terram, vel hominem, sed juvabunt eos, per bonam fidem, ad tenendum et defendendum Regnum Angliæ contra omnes homines.

10. Et, si aliqua alia gens super Regem, vel super Henricum Filium suum, in Angliam venerit, si Comes Theod. vel Comes Phil. ex parte Regis vel Henrici Filii sui, ut prædiximus, summonitus fuerit, infra prædictum terminum, et ante necessitatem, Comes Theod. vel Comes Phil. cum mille militibus in Angliam venient; si non remanserint propter monstrabilem sui corporis infirmitatem, vel terræ suæ amissionem, vel Lodov. Regis Francorum expeditionis summonitionem per totam terram suam, si ipse Comes Theod. vel Comes Phil. tunc temporis ibi sint: et ita, quod nulla prædictarum summonitionum inventa sit per dolum, vel per malum ingenium, vel ad ejus adventum et mille militum suorum disturbandum.

11. Et, si aliquis Comes Angliæ, vel alii homines illius terræ, Regi, vel Henrico Filio suo boissaverint, ita quod Rex, vel Henricus Filius suus, comitatum vel valens comitatum

mitatum amiserit, Comes Theod. vel Comes Phil. cum mille militibus in Angliam in auxilium Regis, vel Henrici Filii sui, veniet; nisi pro aliqua prædictarum quatuor exordiarum remanserit.

12. Et, si uterque Comes propter hoc remanserit, ita quod neuter eorum venire possit, mittet mille milites in Angliam, in auxilium Regis, vel Henrici Filii sui, ut supra diximus.

13. Et si per summonitionem Regis, vel Henrici Filii sui, plures quam mille milites adduxerit, vel miserit, de tot erit quietus in proximo sequenti servitio, quot supra mille adduxerit vel miserit.

14. Et si ex mille militibus defuerint 20 vel 40 et usque ad centum, propter hoc Comes Theod. vel Comes Phil. non amittet conventionem suam erga Regem vel Henricum Filium suum; si, postquam ex parte Regis, vel Henrici Filii sui, Comes Theod. vel Comes Phil. summonitus fuerit, infra 15 dies perficiet numerum.

15. Et homines, qui ad Regem, vel Henricum Filium suum, venerint, vel qui ab illis venient, salve et quiete ibunt et venient per totam terram et per omnes portus Comitum Theod. et Comitum Phil. (et nominatim per totam terram et portus de Bolonesio) quicumque ipsi sint, vel undecumque veniant; nec naves defendentur eis in aliquo portuum, ubi eas convenienter conducere voluerint.

16. Et nec Comes Theod. nec Comes Phil. denegabit licentiam hominibus de terra sua, qui ad servitium Regis Angliæ, vel Henrici Filii sui, venire voluerint; et, si venerint, propter hoc non amittent terram, nec feodum, nec conventionem aliquam, quam habeant de Comite Theod. vel de Comite Phil.

17. Et si Comes Theod. vel Comes Phil. vel homines sui, in auxilium Regis, vel Henrici Filii sui, venerint, quamdiu in Anglia fuerint erunt ad victum Regis, vel Henrici filii sui; et Rex, vel Henricus Filius suus, reddet eis perdita sua, facta in Anglia, sicut mos est reddere familiæ Regis Angliæ.

18. Et quamdiu illa necessitas duraverit, erunt cum Rege, vel Henrico Filio suo, et ei fideliter servient; et, finita necessitate, permittet eos Rex, vel Henricus Filius suus, redire, et inveniet eis naves, et Comiti Theod. vel Comiti Phil. eas salvas cum hominibus suis et pecuniis suis remittet.

APPENDIX TO THE THIRD BOOK.

19. Et inimici Regis, vel Henrici Filii sui, qui sibi weram, vel per terram, vel per mare, facient, fiduciam in neutro Comitum habebunt; nec receptaculum in terra sua, nec in terra Bolonesi, nec alibi, quæ Comes Theod. vel Comes Phil. eis defendere, vel auferre, possit, absque omni dolo et malo ingenio.

20. Et si aliquis hominum Comitum Theod. vel Comitum Phil. Regi, vel Henrico Filio suo, vel hominibus suis forisfecerit, et reſtitutionem, pro neutro Comitum, Regi, vel Henrico filio suo, vel hominibus suis, facere voluerit; nec in Comite Theod. nec in Comite Phil. nec in hominibus eorum fiduciam habebit, nisi consensu et voluntate Regis, vel Henrici Filii sui.

21. Et si Rex, vel Henricus Filius suus, Comitem Theod. vel Comitem Phil. in Normannia vel Cænomania secum habere voluerit in auxilio, et eum inde summonuerit, ipse Comes cum mille militibus ibit illuc, et Regem, vel Henricum Filium suum, per bonam fidem iuvabit, sicut Amicum et Dominum, de quo feodum tenet; nec dimittet quin eat, donec Rex Franciæ iudicari faciat Comiti Theod. vel Comiti Phil. quod non debeat iuvare Dominum et Amicum suum Regem Angliæ, vel Henricum Filium suum, cujus feodum tenet; et hoc per pares suos, qui Comitem Flandriæ de jure debent iudicare.

22. Et istas summonitiones nec Comes Theod. nec Comes Phil. ullatenus diffugient, nec illi, qui hanc summonitionem facient, dampnum vel malum habebunt per Comitem Theod. vel Comitem Phil. nec per aliquem hominem de quo eos Comites prædicti defendere possint.

23. Quod si Rex, vel Henricus Filius, Comitem Theod. vel Comitem Phil. in Normannia secum in auxilio habere voluerit, et cum literis, vel legatis suis, summonuerit, Comes summonitus, ad Regem, vel ad Henricum Filium suum, cum mille militibus veniet: qui postquam in Normannia fuerint, octo diebus erunt ad victum Comitum Theod. vel Comitum Phil. Et si Rex, vel Henricus Filius suus, eos diutius in servitio suo retinere voluerit, morabuntur cum ipso in servitio suo: Et, quamdiu eos retinere voluerit, liberationes suas eis dabit, et perdita eorum, in servitio suo facta, eis restaurabit; sicut mos est facere familiæ suæ.

24. Et si illo tempore Rex Lod. super Regem, vel Henricum Filium suum, in Normanniam intraverit, Comes Theod. vel Comes Phil. ad Lod. Regem Franciæ ibit curā 20 militibus tantum, et omnes alii prædicti milites remanebunt cum Rege, vel cum Henrico Filio suo, in servitio et fidelitate sua.

25. Ipse vero Comes Theod. vel Comes Phil. veniet ad Regem, vel Henricum Filium suum, in Normanniam, sicut prædictum est; nisi remanserit propter apparentem sui corporis infirmitatem, vel terræ suæ amissionem, vel suam expeditionem, vel Regis Francorum, vel Imperatoris Romani expeditionem, sicut supra scriptum est.

26. Et, si propter hoc Comes summonitus remanserit, mille milites, ut prædiximus, in Normanniam, ad servitium Regis, vel Henrici Filii sui, mittet.

27. Et si Rex, vel Henricus Filius suus, in Cænomania cum secum habere voluerit, ipse ibit cum quingentis militibus semel in anno, et erit in familia Regis, vel Henrici Filii sui, per unam integrum mensem, in Cænomania, si Rex vel Henricus Filius suus eos tamdiu retinere voluerit ad liberationem Regis, vel Henrici filii sui, et ad perdita reddenda, sicut mos est familiæ Regis. Et hoc idem faciet cis Rex, vel Henricus Filius suus, ex quo intrabunt in Normanniam, ad eundem in Cænomaniam.

28. Quod si Comes Theod. vel Comes Phil. per summonitionem Regis, vel Henrici Filii sui, plures quam mille milites in Normanniam, vel plures quam quingentos in Cænomaniam duxerit, vel miserit, quot supra mille in Normanniam, vel supra quingentos in Cænomaniam duxerit, vel miserit, de tot erit quietus in proximo sequenti servitio horum duorum servitorum Normanniæ vel Cænomanniæ.

29. Quodcumque Comes Theod. vel Comes Phil. Regi, vel Henrico Filio suo, semel in anno fecerit, per hoc quietus erit de altero servitio in illo eodem anno, nisi gratia amicitiae fecerit.

30. Et, si Comes Theod. vel Comes Phil. in expeditione fuerit, quando hanc summonitionem habuerit, post reditum de expeditione habebit respectum usque ad finitas tres hebdomadas; et eundem respectum habebit, si summonitus fuerit inter proximos octo dies post reditum de expeditione; et, si infirmus fuerit, habebit respectum mittendi milites usque ad finitos 15 dies.

APPENDIX TO THE THIRD BOOK.

31. Et, pro ista conventionem et securitate, et pro servitio supradicto, dedit Rex Henricus et Henricus Filius ejus post eum, Comiti Theod. et Comiti Phil. Filio ejus post eum, quingentas marcas, unoquoque anno, in feodo; scilicet, comiti 400 marcas, et Comitissæ Flandriæ 100 marcas. Et, si Comitissa decesserit, tota pecunia Comiti perfolvetur.

32. Et, pro hoc feodo, per istas conventiones prædictas, et quia Comes Theod. hominum fecerat Regi Henrico avo istius Regis Henrici, Comes Phil. fecit hominum isti Regi Henrico.

33. Et, de omnibus istis conventionibus attendendis, dederunt Comes Theod. et Comes Phil. Henrico Regi, et Henrico filio suo, istos obsides; Canonem Castellorum de Brugis, pro 100 marcis; Eustachium de Grumims Camerarium, pro 100 marcis. Ernold. Comit. de Githnis, pro 100 marcis; Widonem Castell. de Bergis, pro 100 marcis; Walter de Tenremunt, pro 100 marcis; Roger. Castell. de Curtrai, pro 100 marcis; Rathonem de Gavera Pincernam, pro 100 marcis; Roger. de Waverino Dapiferum, pro 100 marcis; Balden de Ballolio, pro 100 marcis; Robert. Advocatum Betonensem, pro 100 marcis; Terril de Aloft, pro 100 marcis; Mich. Constab. pro 100 marcis.

34. Et, de istis 12 obsidibus, debent sex eorum conducere prius dictos milites in servitio Regis, vel Henrici Filii sui, si Comes Theod. et comes Phil. defuerint, propter aliquam prædictarum exoniarum. Et, si sex de obsidibus non fuerint ad conducendum, duo, ad minus, de eis illos conducent, et quatuor de baronibus Comitis, (loco illorum quatuor qui defuerint) æque valentes ad servitium Regis, vel Henrici Filii sui.

35. Et isti prædicti 12 obsides tali conditione sunt obsides; si Comes Theod. et Comes Phil. de prædictis conventionibus exierint, vel alter eorum, et ipsi eum, infra tres quarentenas, reconciliare Regi, vel Henrico Filio suo, non potuerint, quod unusquisque de prædictis obsidibus dabit Regi, vel Henrico Filio suo, 100 marcas argenti, et facient infra tres quarentenas, vel in captione Regis, vel Henrici Filii sui, se ponent, pro prædictis marcis: Et Rex, vel Henricus Filius suus, ab eis non plus exiget quam quod prædictum est; et ponent se in captione in Turri London, vel in alio loco, ubi Rex, vel Henricus Filius suus eos libere possit retinere ad proficuum suum.

36. Et,

36. Et, si aliquis de istis obsidibus mortuus fuerit, vel a fidelitate Comitis Flandriæ, aut a terra sua, recesserit, Comes alium æquivalentem, in loco ejus, ad summationem Regis vel Henrici Filii sui, restaurabit.

37. Et, si, dum obsides jam dictam pecuniam Regi miserint vel Henrico Filio suo, eis in Anglia ablata sit ab hominibus, quos Rex vel Henricus Filius suus constringere possint, quieti erunt.

38. Et, si in mari eam perdiderint, habebunt respectum per 40 dies, ad restaurandam pecuniam.

39. Et, si Regi vel Henrico Filio suo placuerit, Comitissa Flandrensis asscurabit Regi vel Henrico Filio suo, fide sua, pro feodo suo prædicto, quod ad omne posse suum, consilio suo, et precibus suis, faciet Comitem omnes prædictas conventiones tenere integre, et servitia fideliter facere, per bonam fidem, absque omni dolo et malo ingenio.

40. Rex vero asscuravit Comiti Theod. et Comiti Phil. vitam suam, et membra quæ corporibus suis pertinent; et captionem corporum suorum, ne Comites eam habeant ad dampnum suum, quamdiu Comes Theod. vel Comes Phil. prædictas conventiones Regi vel Henrico Filio suo tenuerit.

41. Et, propter prædictas conventiones et prædictum servitium, dabit Rex vel Henricus filius suus Comiti Theod. vel Comiti Phil. prædictas quingentas marcas in natali Domini.

42. Et, si prædicta pecunia in prædicto termino tota persoluta non fuerit infra 40 dies, postquam ipse Rex summationem Comitis, per legatum suum in Anglia vel in Normannia, susceperit, illam persolvat.

43. Si vero in aliqua alia terrarum suarum summationem inde a legatis comitis susceperit, infra 40 dies, postquam in Angliam vel Normanniam redierit, pecunia persolvetur, sine malo ingenio.

44. Hujus conventionis ex parte Regis et Henrici Filii sui obsides sunt, Rich. de Humez Constabular, pro 100 marcis; Reginald de Sancto Valerico, pro 100 marcis; Rich. de Lucy, pro 100 marcis; Henricus filius Gerald. Camerarius, pro 100 marcis; Bernardus de Sancto Walerico, pro 100 marcis; Manasser. Biset Dapifer, pro 100 marcis; Roger de Cailli, pro 100 marcis; Hugo Comes de Norf, pro 100 marcis; Willielmus Comes de Arundel,

pro 100 marcis; Robertus filius comitis de Legra, pro 100 marcis; Galf, pro 100 marcis; Hug. Comes Cestriæ, pro 100 marcis.

45. Et isti tali conditione sunt obsides erga Comitern, quali conditione Comitum obsides erga Regem et Henricum Filium suum.

46. Et omnes obsides coramuniter affecuraverunt quod non diffugient summonitionem, et quod summonitores securi erunt ab eis, et ab omnibus ques prohibere poterunt a documento ipsorum.

Nº. XII.

Ep. xxxiii. l. ii. Alexandro Papæ Episcopi et Clerus Angliæ.

Patri suo et Domino, summo Pontifici Alexandro, Anglicanæ Ecclesiæ devotum et debitum charitatis et obedientiæ famulatum.

This refers
to B. iii. p.
513.

SUBLIMITATI vestræ, Pater Reverende, venerande, gratias affectuose referimus, quod ad petitionem filii vestri devotissimi, Dominique nostri dilectissimi, illustris Anglorum Regis, filios vestros clarissimos, summeque vobis in ea, quæ ad præsens est, tempestate necessarios, ad ipsum curastis in longinqua transmittere, affectuque paterno, eorundem laboribus, nostris parcere, et gravaminibus nostra pie gravamina sublevare. Habentes itaque mittenti gratias, missos honore debito, totaque cordium alacritate, suscepimus, sperantes eorum adventu finem malis diu jam protractis imponi; et quæ turbata sunt apud nos in pacis pristinæ serenitatem, cooperante sibi gratia, reformari. Inde est quod eis, tanquam iudicibus ad hoc a Sanctitate vestra directis, nostram una cum Domino nostro Rege præsentiam reverenter exhibuimus, optantes pariter et expectantes omnia, quæ inter Dominum nostrum Regem

gem et Dominum Cantuariensem, quæque inter ipsum vertuntur et nos, in eorum præsentia palam fieri, et, juxta vestri formam mandati, diffinitiva eorum sententia plenissime terminari. Ipsi in modum hunc reverentiam judiciaræ potestati debitam exhibentes adstitimus, et ecce! sinistro confusi nuncio, a prius concepta spe gaudii in desperationis foveam lapsi, audita satis nequimus admirari. Auditio enim, et ipsa legatorum vestrorum confessione recognito, eos ad judicandum causam hanc, ob quam venerant, potestatem omnino non habere, et quod a Sanctitate vestra Domino nostro Regi concessum, scriptoque firmatum fuerat, id non tenere, Dominus noster Rex, ultra quam dici possit, ira totus incanduit, in tantum quidem, ut ad solitam erga vos animi mansuetudinem vix eum nostra etiam in commune supplicatio revocare potuerit. Totum itaque, quod in adventu legatorum vestrorum conceperamus, gaudii cœpit illico tristitiæ nubo superduci. Ad iram hanc fortius inflammandam incentiva præbebant ipsa nobilium colloquia, id Domino Regi sæpius inculcantia, sibi Regnoque suo nulla jam adversus Dominum Cantuariensem superesse subsidia, cum appellatio Regni dudum ad vos facta jam expiraverit, et ei legatorum vestrorum in nullo cura subveniret. Hinc apud Regni principes tanta exorta turbatio, ut, nisi juxta datam vobis sapientiam pericula jam erumpentia providendo præcluseritis, Christi vestem scindi miserrime de proximo doleatis. Totis enim studiis Dominus Cantuariensis desudat, ut Dominum nostrum Regem anathemate, Regnumque ejus interdicti pœna constingat. Potestatem, quam in ædificationem, et non destructionem ecclesiæ, suscepisse oportuerat, sic exercet in subditos, ut omnes in Regis odium, et totius Regni nobilium tentet inducere, et eorum substantiis direptionem, cervicibus gladium, aut corporibus exilium, intente studeat procurare. Crebris literis graves eis mandatorum imponit farcinas, quas præsens ipse non digito movere voluit, nedum humeris sustinere. Ad mortem nos invitat, et sanguinis effusionem, cum ipse mortem, quam nemo sibi dignabatur aut minabatur inferre, summo studio declinaverit, et suum sanguinem illibatum conservando ejus adhuc nec guttam effundi voluerit. Pro Christi quippè mori gloriosum est: in mortem verò imprudenter irrumperere, Christo scimus non placere. Libertatem prædicat ecclesiæ, quam se Cantuariensi ecclesiæ viribus intrudendo sibi constat admisisse. Regni consuetudines frequenter improperat, quas

longè aliter, quàm se res habeat, suis scriptis vestræ celsitudini manifestat. De cætero, sanctorum canonum auctoritatem erga nos non observat, cum appellantes ad vos post appellationem excommunicet, alios sine citatione aut commonitione suspendat; notoria, quæ nec nota nec veritate subnixa sunt, asserat; et in hunc modum plurima, quâ potest potestate, confundat. Ad hæc, *quadraginta marcarum millia, vel amplius, ut sui asserunt, bonæ suæ fidei commissa, Domino nostro Regi solvere, vel quod justum est exhibere detreclat; et Regi suo negat et Domino, quod nec ethnico denegare debuerat aut publicano.* Unde, ne ligent nos jam dicta gravamina, ne taciturnitate nostra, et indiscretâ quadam conniventia permittamus id fieri, unde Dominum nostrum Regem, et Regnum ejus ipsum et sequentes populos, à vestra contingat obedientia profus averti, adversus suspectas nobis D. Cantuariensis sententias, adversus mandata ejus omnia, Domino nostro Regi et Regno ejus, personis nostris et commissis nobis Ecclesiis et Parochiis, gravamen aliquod importantia, vestro nos per omnia committentes consilio et protectioni subdentes, ad audientiam vestram appellavimus, et appellationi terminum diem transitus Beati Martini constituimus.

N^o. XIII.

Ep. xlix. l. i Alexander Papa Thomæ Cantuariensi Archiepiscopo.

This refers
to p. 514.

QUOD minor majorem judicare non possit, et eum præsertim, cui jure noscitur prælationis subesse, et obedientiæ vinculo tenetur adstrictus, tam Divinæ quam humanæ leges demonstrant: et præcipue sanctorum Patrum statutis id manifestius declaratur. Hæc siquidem nos, quorum interest errata corrigere, et ea, quæ incorreclâ perniciosum posteris exemplum relinquerent, sollicita consideratione pensantes, attendentes etiam, quod ex delicto personæ non debet ecclesia jacturam aliquam vel incommodum sustinere, sententiam ab Episcopis et Baronibus Angliæ, quoniam ad primam Regis citationem tui copiam non fecisti, adversum te præsumptuose prolatam, in qua tibi jam dicti Episcopi et Barones omnia mobilia
tua,

tua, tam contra juris formam, quam contra Ecclesiasticam consuetudinem, abjudicarunt; (præsertim cum nulla mobilia præterquam de bonis Ecclesiæ tuæ habueris;) irritam penitus esse censemus, et eam apostolica autoritate cassamus, statuentes ut nullas imposterum vires obtineat, aut tibi vel successori^{us} tuis sive Ecclesiæ tuæ gubernationi commissæ, aliquod imposterum valeat præjudicium vel læsionem afferre.

N^o. XIV.

MS. Cotton Fol. Claudius, B. 2. fol. 268.

Henrico Regi Angliæ Jobannes Neapolitanus.

PLACET nobis plurimum, per omnia gratum This refers to p. 479.
duximus et acceptum, quod ad executionem voluntatis vestræ nostra studia promptius advocastis. Nos quidem, licet absque summonitione etiam vestra, quotiescunque opportunitas se offert, studiosi semper simus, et solliciti elaboremus, quæcunque vobis utilia, sive ad honorem vestrum cognoscimus proventura, sicut nobis possibile, perficere et promovere, et contraria propensius depellere et longius propulsare, cum etiam Magnitudinis vestræ litteris sollicitamur, tanto fortius accingimur, et ad complementum petitionis vestræ accuratius præparamur; quanquam et ipsa summonitio vestra et sollicitatio plurimum placeat, et voti atque desiderii nostri est, ut, quicquid possumus, totum ad vestræ voluntatis arbitrium omni modo exponamus.

Venientes igitur ad Ecclesiam Romanam honorabiles nuncios vestros, Abbatem (videlicet) St. Augustini, Archidiaconum Sarisberiensem, Magistrum Simonem de Carcere, et Magistrum Henricum, cum literis vestris, quas Excellentia vestra per ipsos nobis transmisit, honorifice et læte recipimus. Attente atque sollicite vestra beneplacita et significata intelleximus, dedimusque cum eis operam studiosam, et exactam diligentiam adhibuimus, quod Dominus noster primam petitionem vestram, vel saltem secundam executioni mandaret. Ut vero omnis conatus noster omneque studium et argumentosa sollicitudo

caso

casto labore defecit, nihilque obtinere potuit de hiis quæ juxta petitionis vestræ tenorem postulavit, visum nobis et complacuit quod ad aliud remedium nostra studia converteremus.

Rogavimus igitur, et, licet cum multâ instantiâ, impetravimus tum tales literas à Domino Papâ, per quas temeraria præsumptio et indiscreta audacia Cantuariensis Archiepiscopi repressa et conculcata creditur, et vobis aliquatenus cognoscitur pro qualitate temporis satisfactum. Præfati vero nuncii vestri, qui, sicut industrii et probi viri vobisque fidelissimi, curare executionem mandati studiosissimi extiterunt, cum pro certo novissent, quod nullo modo aliquam de petitionibus vestris obtinere valerent, ad consilium et exhortationem nostram, et quasi compulsionem, receperunt literas illas, quas Dominus Papa per eos vobis mittit. Quamquam enim plurimum pertimerent et formidarent illas recipere, quia hoc de mandato vestro non habebant, induciti tamen et complusi a nobis, sicut diximus, quod liquido cognovimus nullatenus expedire quod his temporibus literas tales dimitterent, assensum præbuerunt admonitioni nostræ. Nos itaque, quia honorem vestrum puro corde et animo diligimus, et voluntati vestræ in omnibus pro posse nostro obtemperare desideramus, laudamus vobis atque consulimus, quatenus recipientes recipiatis, et gratum ducatis quod Dominus Papa ad præfens vobis concedit, scientes et nullatenus dubitantes, quod, si creditis suggestioni nostræ quam per præfatos nuncios vestros vobis aperimus, Cantuariensis ille videns se omni destitutum auxilio, et cognoscens certissimè quod ad regimen Cantuariensis Ecclesiæ non valeat ulterius aliquâ ratione redire, et ipse spontaneus abrenunciabit, et in aliâ ecclesia, ubi vivere possit, sibi-provideri suppliciter exorabit.

N^o. XV.

*Injunctions sent over from King Henry II. Ann.
Dom. 1169. Cod. Cotton, MSS. Claudius, B.
ii. p. 27.*

1. **S**IQVIS inventus fuerit literas ferens Domini Papæ, This refers
to p. 571. vel aliquod mandatum Archiepiscopi Cantuariensis, continens interdictum Christianitatis in Anglia, capiatur, et de eo sine dilatione justitia fiat sicut de traditore Regis et Regni.

2. Nullus Clericus, vel Monachus, vel Conversus, vel alicujus Conversionis, permittatur transfretare vel redire in Angliam, nisi de transitu suo habeat literas Justitiæ, et de reditu suo literas Domini Regis. Si quis aliter inventus fuerit agens, capiatur et incarcerationetur.

3. Ne aliquis appellet ad Papam vel Archiepiscopum.

4. Ne aliquod placitum teneatur de Mandatis Papæ, vel Archiepiscopi, vel aliquod Mandatum illorum in Angliâ ab ullo homine accipiat. Si quis inventus fuerit aliter agens, capiatur et incarcerationetur.

5. Generaliter quoque interdictum est, quod nullus ferat aliquod Mandatum clerici vel laici Domino Papæ, vel Archiepiscopo. Si quis inventus fuerit, capiatur et incarcerationetur.

6. Si Episcopi, vel Clerici, vel Abbates, vel Laici, sententiam interdicti tenere voluerint, sine dilatione de terra ejiciantur, et tota eorum cognatio, ita quod de catalis suis nihil secum ferant.

7. Ut Catalla omnium Papæ vel Archiepiscopo faventium, et omnes possessiones eorum, et omnium eis pertinentium, cujuscumque gradus, vel ordinis, vel sexus, vel conditionis sint, capiantur, et in Dominica manu D. Regis confiscentur.

8. Ut omnes Clerici, qui reditus habent in Anglia, sint summoniti per omnes Comitatus, ut infra tres menses veniant in Angliam ad reditus suos, sicut diligunt reditus suos; et, si non venerint ad terminum statutum, reditus in manu Regis capiantur.

9. Ut denarii Beati Petri non reddantur ulterius Apoc-
tolico,

tolico, sed diligenter colligantur, et servantur in Thesaurò Regis, et expendantur ad ejus præceptum.

There is a tenth article concerning the Bishops of London and Norwich, which I have not translated in my History; because from letters written at that time, I have reason to believe it was added afterwards. It runs in these words. “Lundoniensis et Norvicensis Episcopi sint in misericordia Regis, et summoneantur per Vice-comites et Bedellos, ut sint contrà Regis Justitias ad rectum faciendum Regi et Justitiis ejus de eo, quod contrà statuta de Clarendune interdixerunt ex Mandato Papæ terram Comitum Hugonis, et excommunicationem, quam de Papa in ipsum fecerat, per suas Parochias divulgaverunt sine licentia Justitiarum Regis.”

N^o. XVI.

MS. Cotton Claudius, B. ii. fol. 288.

Alexander Papa Rogero Eboracensi Archiepiscopo.

This refers
to p. 590.

QUANTA per charissimum filium nostrum, Henricum illustrem Anglorum regem, ampliora incrementa et commoda in hujus necessitatis articulo Ecclesiæ Dei pervenisse noscuntur, et quanto nos eum pro suæ devotionis constantia majori affectione diligimus et cariorum in nostris visceribus retinemus, tanto ad ea quæ ad honorem, incrementum, et exaltationem ipsius et suorum cognoscimus pertinere promptius aspiramus. Inde est utique, quod ad ejus petitionem, dilectum filium Henricum primogenitum filium suum, communicato fratrum nostrorum, consilio, *ex auctoritate Beati Petri ac nostrâ concedimus in Angliâ coronandum.* Quoniam igitur hoc ad officium tuum pertinet, Fraternitati tuæ per Apostolica scripta mandamus, quatenus, cum ab eodem filio nostro Rege propter hoc fueris requisitus, coronam memorato filio suo *ex auctoritate sedis Apostolicæ* imponas, et nos quod a te exinde factum fuerit ratum ac firmum decernimus permanere. Tu vero debitam ei subjectionem et reverentiam, *salvo in omnibus Patris sui mandato*, exhibeas, et alios similiter commoneas exhibere.

No.

N^o. XVII.*Chron. Gervase, Fol. 1410, l. 50.*

IMPRIMIS inquiratur de vice-comitibus et ballivis This refers to p. 592. eorum, quid vel quantum acceperint de singulis hundredis, et singulis hominibus, postquam Rex novissime transfretavit in Normanniam, unde terra vel homines gravati sunt; et quid acceperint per judicium comitatus vel hundredi, et quid sine judicio. Et quod inquisierint captum esse per judicium scribatur separatim, et quod sine judicio, similiter separatim scribatur, et de omnibus prisis inquirant causam et testimonium.

Similiter inquiratur quot et quas terras vicecomites vel ballivi eorum emerint vel invadiaverint.

Similiter inquiratur de Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Vavasoribus, Civibus, Burgensibus, et eorum seneschallis, præpositis, et ministris, quid vel quantum acceperint per terras suas, post terminum supradictum, de singulis hundredis suis vel villatis, et de singulis hominibus suis, per judicio. Et omnes prisas et causas et occasiones eorum scribant separatim.

Similiter inquiratur de omnibus illis qui post terminum illum habuerunt aliquot bailias de rege in custodia, sive de Honore aliquo vel aliqua eschaeta, quid et quantum in bailia illa adquisierint.

Similiter inquiratur de bailivis regis, qui per terram suam erraverunt pro negotiis regis faciendis, quid eis datum sit.

Et de catallis fugitivorum pro assisa de Clarendune, et de catallis eorum qui per assisam perierunt, inquiratur quid actum sit, et quid inde exierit de singulis hundredis, et singulis villatis, et singulis hominibus. Et inquiratur an aliquis in assisa illa injuste reatus fuerit, pro præmio, vel promissione, vel odio, vel aliquo modo injusto; et an aliquis de reatus relaxatus fuerit, vel reversus, pro præmio, vel promissione, vel amore; et quis inde præmium acceperit. Et inquiratur de auxilio ad maritandam filiam regis, quid inde exierit de singulis hundredis, et de singulis villatis, et de singulis hominibus, sive in redditibus, sive in pardonis, et cui illud traditum et liberatum fuerit. Et inquiratur

APPENDIX TO THE THIRD BOOK.

inquiratur quid et quantum acceperint forestarii et bailivi, et ministri eorum, post terminum supradictum, in bailiis suis, quocumque modo illud acceperint, vel quacumque occasione: Et si quid pardonaverint de reatibus Domini Regis pro præmio, vel promissione, vel amicitia alicujus: Et de forisfactis forestarum, et de hiis qui in forestis suis forisfecerunt de cervis et bisfis, et aliis bestiis salvagiis: Et si forestarii vel bailivi eorum aliquem acceperint vel attacherint, [leg. attachiaverint] per vadium et per plegium, vel reataverint, et postea sine justitia per se relaxaverint. Et omnes qui reatati fuerunt de quocumque reato ponantur per vadium et per plegium, quod sint coram Domino Rege die quem eis ponat, et quod rectum faciant, et adretiabunt ei et hominibus suis quod adretiare debuerint: et quibus plegij defuerint custodiantur.

Et inquiratur si vicecomites, vel quicumque bailivi eorum, vel Domini Villarum, vel bailivi eorum, aliquid reddiderint de hiis quæ acceperant, vel si pacem aliquam cum hominibus fecerint postquam audierunt adventum Domini Regis, pro disturbare, ne inde ante Regem vel Justicias quærimonia veniret.

Et de amercitiis inquiratur, si aliquis relaxatus fuerit pro præmio, vel amore, de hoc quod primo fuit amercitatus; et per quem hoc factum fuerit. Et similiter inquiratur per omnes Episcopatus, quid et quantum et qua de causa Archidiaconi vel Decani injuste et sine judicio ceperint; et hoc totum scribatur. Et inquiratur qui debent Regi homagium, et nondum fecerunt neque illi neque filio suo, et inbrevientur.

The Preamble to this runs thus.

Rex autem, convocatis optimatibus suis, instituit abbates et clericos, comites, et milites, qui circuierunt terram, dans formam inscriptam, quomodo eis esset agendum. In Cantiam, Suthreiam, et Middlesexe, et Berkescire, et Oxenefordscire, et Bukingehamscire, et Bedefordescire missi sunt Abbas Augustini Cantuariæ, Abbas de Chertescie, Comes de Clara, Wilhelmus de Abrancis Maneser de Dammartin, Geroldus filius Radulfi, Gilebertus de Pinkeni, Wilhelmus filius Helt, Willielmus filius Nigelli, Willielmus filius Martini, Radulfus de Hospitali, Radulfus de Dene. Hi omnes simul supradictos comitatus circuierunt. In hunc modum per alios comitatus Angliæ inquisitores missi sunt. Et hæc inquirere debuerunt.

Postea

Postea capient sacramentum ab omnibus Baronibus, militibus, et liberis hominibus de Comitatu, et cæteris hominibus, et ab omnibus Civibus et Burgensibus, quod verum dicent de hoc quod ab eis inquiretur ex parte Domini Regis, et quod non celabunt veritatem neque pro alicujus amore, nec prece, nec pretio, nec timore, nec pro aliquâ promissione, nec pro ullâ re,

N^o. XVIII.

*Ex Epistolis S. Thomæ Cantuar. Edit. apud Bruxell
MDCLXXXII. Epist. XL. lib. iv.*

*Thomas Cantuariensis Archi-episcopus Roberto Vigornensi
Episcopo.*

VIR illustris Robertus Comes Gloucestræ, Pater ^{This refers to p. 598.} vester, cum plures haberet filios, vos ampliori præ cæteris affectu traditur dilexisse, eò quod vos in senectute genuerit, et totum, prout indoles pollicebatur, prudentiæ suæ et virtutum fomitem, Dei cõoperante gratiâ, transfudit in sobolem, quam utpotè pretiosissimam ab inunte ætate Domino consecravit. Intuemini, quam prudens, quàm fidelis, quàm magnanimus, quàm constans fuerit ille, qui florentis, pugnacis, gratiosi, generosi Regis, et opulenti, ejusdemque Normannorum Ducis, et Bologniæ Comitis, vires aggressus oppressit: et non modò Regno privatum, sed et captivum, coniecit in vincula, adeoque fortunam indignantem, habitâ fidei et virtutis ratione, contempsit, ut pro reparandâ sacramenti maluerit, quam soror ejus et Domina juris sui dispendium pateretur. Qui, licet invidia fortunæ captus fuerit, vinculatus tamen judicio sapientum tantus habitus est, ut liberationem ejus commutandam et emendam cenjuerint Rege et Regno. Contemplatio viri clarissimi vobis adjiciat antimos; eum, qui vos generosi sanguinis titulo illustravit, cõætaneis et posteris repræsentate moribus et virtute. Huc accedit colendæ virtutis nobilior titulus, pontificalis apex, qui sicut episcopale officium fideliter adimplentes amplior gloria et honore coruscantes illustrat, sic timidos et ignavos abjectio: i

iori vilitate reddit inglorios. Sal enim infatuatum ad nihilum utile est, sed tanta abjectione vilescit, ut nec stercoribus comparetur, quibus agrorum infœcunditas propulsatur. Nam ut ait Martyr Cyprianus, *Episcopus si timidus est, actum est de eo : actum*, inquit, quia cum ipsum timor mundanus effœtum reddiderit, superest ut ad omnia salubriter agenda inutilis sit. Charitas ergo timorem hunc expellat, ut populi ducem expediat, quia deficientis timore ducis exhortatio nequaquam militum potest animos ad fortia roborare. Et quidem nutu divino credimus accidisse, ut vos, ad propulsandam matris vestræ, sanctæ scilicet Cantuariensis ecclesiæ, injuriam, diebus his contigerit transfretare, quo præsentialiter resistere possitis eis, sicut nobis promissistis, qui eam gratis diutius affixerunt, adhuc sine causa quærunt animam ejus, ut auferant eam.

Quod ut, Dei præeunte gratiâ, commodius facere valeatis, vos literis Domini Papæ, tanquam armis bellicis, præmuniendos esse decrevimus, ut fratrum nostrorum corda possitis efficacius in Domino confirmare. Rogamus itaque et obsecramus in Domino Jesu Christo, et in virtute obedientiæ, et in periculo officii, honoris, et beneficii præcipimus, quatenus literas Apostolicas, quas vobis mittimus, ostendatis venerabili fratri nostro Rogerio Eboracensi Archiepiscopo, et aliis fratribus et Coepiscopis nostris, et inhibeatis autoritate Domini Papæ, ne præfatus Eboracensis filio Domini Regis consecrationis munus dare, aut coronam, si hoc ab eo petitum fuerit, præsumat imponere. Sub eâdem interminatione præcipimus, ut similiter hoc inhibeatis Episcopis Londoniensi et Saresberiensti, et cæteris, si quis hoc ausus fuerit attentare. Hoc autem, Deo teste et judice, non in Domini Regis, aut filii sui, aut cujuscumque vel Ecclesiæ vel Personæ, ex conscientia nostrâ mandamus injuriam, sed ex necessitate, quâ cogimur Ecclesiæ Cantuariensis jura pro viribus conservare. Parati enim sumus, si Domino Regi placuerit, filium suum coronare pro debito officii nostri, et utrique honorem debitum et reverentiam exhibere. Non vacillet in his implendis, frater charissime, fides vestra, quia fidelis est Deus, qui vos supra vires tentari non patietur.

Confidite ergo in ipso qui vicit mundum, et memineritis quoniam qui timet pruina irruit super eum nix, et qui declinat arma ferrea frequenter incidit in arcum æneum. Degeneres animos timor arguet, et fortiter ausos juvabit gratia, gloria coronabit. Quidquid agant alii, nobis persuasum

suaſum eſt, quòd conſtantiam veſtram nullius turbinis impetus franget, quod quæ de ore veſtro proceſſerunt, et tam veſtro quàm Epifcopi Lexovenſis ſcripto continentur, et ſub utriuſque charactere impreſſa ſunt et expreſſa, non erunt irrita. Abſit enim ut generoſus ſanguis ſit animæ degenerantis habitaculum, ut per vos tituli patrum oblitterentur, ut quæcunque trepidatio mentis, aut ignavia operis, evincat Patris, qui vos omnibus liberis prætulit, erraſſe iudicium, et antiquæ charitatis excludat affectum. Nam, ut piè creditur à fidelibus, ille feliciter in Deo, quam in liberis vivit, et ſtudioſis operibus aut reprobis gratiam ejus promereri poteſtis aut demereri.

Nº. XIX.

Epift. xi. l. 5.

Thomæ Cantuarienſi Archiepiſcopo quidam Amicus.

REX prima Dominica die Londoniis debet eſſe, eoque Archiepiſcopum Eboracenſem, omneſque Angliæ Epifcopos et Barones, ad diem illam, ex omnibus terræ partibus convocavit. Sane ea die coronabit filium Regis Eboracenſis, uxore ejus, filia ſcilicet Regis Francorum, apud Cadomum dereliſta, et quaſi repudiata, in contumeliā Patris et contemptum. Coronabitur certè puer ille quem diximus, niſi Dominus mare clauſerit navigare volenti, vel manus contraxerit Eboracenſi, vel niſi Rex Francorum aliquo prohibitionis modo inhibuerit. Puer enim properat ad mare, et a patre expectatur in adverſo littore. Et, de mandato Regis, Baiocenſis et Sagienſis cum puero vadunt. Ricardus de Humet non ibit. Regina Cadomi morabitur, donec gaudii hujus certitudinem acceperit. Literæ ergo Domini Papæ ſuper prohibitione conſecrationis hujus diu eſt quod mare tranſierunt; ſed inutilis proſuſ eſſet in manu illius cui traditæ ſunt perierunt, nec alicui offenſæ, nec ullatenus propalata. Quid igitur profunt quæ ſic occultantur, per quas nec coronæ impoſitio nec perſonæ unctio ceſſabit? Certiſſimè enim ſciatis hoc ſine dilatione futurum. Etſi non auderet Eboracenſis, manus cruentas apponeret *carnifex* Sagienſis. Hoc autem fit contra vos, ut nec diutius liceat etiam ſpe-

This refers
to p. 600.
B. 3.

rare, de pace, cui non solum pax differtur, sed tota spes pacis et reconciliationis aufertur. Dixit enim nobis Richardus de Welceſtre, qui pro accelerando tranſitu pueri venit, altera die, uſque Cadomum, et ſtatim reverſus eſt cum illo; dixit, inquam, ille, quod pacem veſtram omnibus modis diſſerret, et ſi aliter non poſſet, non ſolum Domino Papæ, ſed etiam ipſi Deo inobediens Rex uſque ad mortem exiſteret, ante quam vobiſcum pacem haberet. Nolite ergo ſperare in iniquitate, nec Templariis illis credite, qui non ambulant in ſimplicitate, ſed Regis potius, quam veſtram voluntatem exequi cupientes, vobis nihil aliud quàm mendacia, de Rege et Patre mendacii, adferunt, ut decipiant. Quicquid enim Rex agit vobiſcum dolus eſt et nequitia. Sed, ut pace veſtrâ loquor, ſtultum decipit verbis inanibus, ut interim ſibi magis provideat, et de tractu temporis contra vos majores inſidias paret, et laqueos præparet fortiores. *Quid igitur facies, hominum miſerrime, ſi tibi fuerit ſub temporis brevitate ſubſtractum ad quod tantis temporibus ſuſpiraviſti: ſi per alium Rex fuerit affectus qui non niſi per te regnare debuerat?* Immo quid facies, ſi inimicus tuus Regem tibi conſecravit inimicum, ut contra te, in Patris auxilium, quantò junior, tantò fortior, manus inſurgat? Verum quid faciet Rex ipſe Francorum, cujus ita filia contemnitur, cui regnum aufertur, cujus ſperanda poſteritas condemnatur? Cur enim ejus filius, qui adhuc ei fortaſſe nſcetur, Regni gloriam conſequeretur, ſi ipſa modò coronæ indigna judicatur? Forſitan non movebitur Rex ille nimium juſtus, nec ſuum filizque contemptum vindicabit, ſed magis in ſuâ juſtitia peribit. Moderatè loquor in Chriſtum Domini, ſed tamen pro nihilo ei coronam Franciæ deferet qui coronam Angliæ tam facilè aufert. Unicum ergo et ſingulare ei et vobis remedium eſt, ut, ſine omni dilatione, ad Reginam et ad Richardum de Hymet nuncios mittat, qui ex ſuâ parte prohibeant ne fiat, et, ſi factum fuerit, ab utroque cum diffiduciâ ſeparentur. Sic enim terriſi Richardus et Regina mittent ad Regem, et Regis impediatur voluntas. Nuncius enim Regis Francorum, vel veſter, nullus poſſet ad Regem noſtrum accedere. Et, ſi literas Domini Papæ deferret, mitteretur in carcerem; ſi Regis Franciæ, teneretur honeſtè, ſed non procederet, donec negotium ad aures Regis perveniret. Currite ergo ſtatim ad Regem, et advocate Senonenſem, ut aliquod opponatur obſtaculum huic operi, quod, in Perſonæ.

Personæ Regis contemptum, et in causâ vestrâ præjudicium, noscitur agitari. De cætero sciatis Thomam, novum Archidiaconum Bathonensem, nuper à Rege ad Archiepiscopum Rothomagensẽ venisse, et à Nivernensi Episcopo transeundi inducias impetrasse usque ad sequentem Dominicam. Publicè enim Thomas ille clamavit, et multi alii quotidie clamant, Regem in proximo esse venturum: Quod penitus est falsissimum. Per Episcopatus ergo et Abbatis, et per domos Regias, usque ad montem S. Michaelis formicino gradu Nivernensis incedit, et qui in terrâ suâ quindecim esset contentus, triginta sex equitaturas adducit. Dicitur ergo, quod magis sitit pecuniam Regis, quàm pacem Regni; magis lucrum suum, quàm commodum vestrum. Et res satis manifestis indicis declaratur. *Sextâ enim feriâ post octavum Pentecostes venit Cadomum, unde tunc filius Regis exierat, cum quo Nivernensis optime, si vellet, transire potuisset. Sed dicitur ei Regem cito esse venturum, aut navem Regiam venturam propter ipsum. Et sic homo ille, mores gentis vestræ penitus ignorans, fallaciis capitur, nec in manu ejus verbum Domini prosperatur. Verum, si astutias istas intelligeret, si concito gradu ad mare properaret, oporteret Archiepiscopum præire, et istum Regis responsum expectare. Et, si omnino vellet transire, navem quidem et instrumenta navis inveniret, sed gubernator nullus appareret. Singuli enim fugerent, vel se nihil scire dicerent, vel ventum penitus esse adversum jurarent. Stultus ergo fuit, si veniendi per vos voluntatem habuit, qui per Flandriam ire disposuit. Statim ergo literas Regis, et literas Senonensis, et nuncium vestrum, ad Nivernensem dirigite, ut cum omni celeritate Reginam Cadomi morantem conveniat, quatenus ei transitum paret. Quæ si noluerit ob manifestam impossibilitatem, idem Episcopus ad vos revertatur, facturus citius quod facturus est. Nolite enim de cætero parcere, sed totum spiritum effundite, totum gladium evaginate, quoniam non respiciet vos oculus Regis usque in sempiternum.* Respiciat autem super vos et super oves pascuæ suæ oculus Pietatis Divinæ, et magis de principibus victoriæ gloriam, quàm principum pacem non veram, Ecclesiæ suæ conferre dignetur. Valete. Et, si adversitas increbuerit, nolite timere, quia Dominus supponit manum suam.

Nº. XX.

*Ep. xlv. l. v. Alexandro Papa Thomas Cantuariensis
Archiepiscopo.*

*Serenissimo Domino et Patri Charissimo, Alexandro Dei gra-
tia summo Pontifici, Thomas S. Cantuariensis Ecclesiæ
minister humilis, salutem et omnem cum summa devotione
obedientiam.*

This refers
to p. 609,
610. B. iii.

MISERATIONIS oculo respexit Deus Ecclesiam suam, et tandem tristitiam ejus in lætitiâ commutavit. Nec dubium, Pater, quin, si nobis vera dicentibus ab initio fuisset creditum, cornua retunderentur eorum, qui ventilabant, conterebant, et variis plagis vulnerabant Ecclesiam, ut, exterminata prorsus libertate ejus, et evacuata autoritate Divinæ Legis, vigerent consuetudines *aut potius abusiones veterum tyrannorum*, Romanus Pontifex nesciretur in Angliâ, et sponsæ Christi privilegia sine reparationis spe delerentur. Ecce enim ad novissimas literas vestras, quibus Domino Regi Anglorum innotuit, quod ei ulterius non parceretis, sicut nec pepercistis Frederico *dicto Imperatori*, cum intellexisset terram ejus, amotis omnibus subterfugiis, interdicto subjiciendam esse, et Episcopos, si qui forte non obedirent, suspendendos et excommunicandos, illico nobiscum pacem fecit, ad honorem Dei, et maximam, ut speramus, Ecclesiæ utilitatem. Nam de consuetudinibus, quas tantâ pertinacia vindicare consueverat, nec mutire præsumpsit: Nullum à nobis vel aliquo nostrorum exegit juramentum. Possessiones, quas occasione diffensionis hujus ecclesiæ nostræ abstulerat, prout eas in chartula expresseramus, nobis concessit: pacem, et securitatem, et redditum, omnibus nostris promisit, et osculum, si tamen vellemus eum eatenus perurgeri: *ut non modo in omnibus articulis victus appareret, sed ut perjurus diceretur ab hiis, qui audierant ipsum jurasse, quod non erat nos ea die in osculo recepturus.* Nos autem, habito plurium sapientium consilio, et maxime Domini Senonensis, qui pacem nostram cæteris sollicitius et efficacius procurabat, cum ipso ad colloquium Regis accessimus, quem, Deo faciente, qui omnes illos amoverat qui sanctitatem vestram variis dolis

dolis circumvenire soliti sunt, adeo mutatum invenimus, ut, quod sine circumstantium admiratione non contigit, animus ejus in nullo videretur a quietis consiliis abhorrere. Nam, ut nos procul adventantes conspexit, a circumfusa turba exiliens occurrit properus, et, capite detecto, nos in salutationis verba prorumpere gestientes salutatione prævenit, et habitis paucis sermonibus, solis nobis præsentibus cum Domino Senonensi, nos, illo divertente, stupentibus universis, traxit in partem, et diu tanta familiaritate collocutus est, ut videri posset, nunquam inter nos aliquam fuisse discordiam. Omnes fere, quotquot aderant, lætissima admiratione stupentes, plurimorum genis lacrymarum imbre madentibus, glorificabant Deum, et benedicebant beatam Magdalenam, in cujus solemnitate Rex conversus est a viis pristinis, ut toti terræ suæ lætitiâ reformaret, et ecclesiæ redderet pacem. Corripuimus eum, adhibita moderatione quam oportuerat adhiberi, vias quibus incederat, et pericula quæ undique imminebant patenter ostendimus. Rogavimus et monuimus ut rediret ad cor, ut dignos fructus poenitentiae faciens, et Ecclesiæ, quam non mediocriter læserat, manifesta boni compensatione satisfaciens, purgaret conscientiam, et redimeret famam: Nam ab iniquis consiliariis potius, quam a propriæ voluntatis instinctu, grave utriusque dispendium patiebatur. Cum autem hæc omnia, non modo patienter, sed et benigne, audiret, et emendationem promitteret, adjecimus sibi necessarium esse ad salutem, et liberis suis ad incolumitatem et indemnitatem concessæ divinitus potestatis, ut in eo Sanctæ Cantuariensi Ecclesiæ, Matri suæ, diligentius satisfaceret, in quo eam nuper gravissime læserat: Nam filium suum, contra jus antiquissimum Ecclesiæ nostræ, fecerat enormiter coronari, usurpatione Archiepiscopi Eboracensis, qui contra vetustissimam consuetudinem, et post prohibitionem vestram, et etiam in aliena provincia, consecrationem hanc exequi cæca nimis et temeraria ambitione præsumpsit. In quo ille paululum reluctans, protestatus tamen ante, se nihil proponere vel propositurum esse animo contendendi, Quis, inquit, coronavit Regem Wilhelmum, qui sibi Angliam subjugavit, et Reges succedentes? Nonne Eboracensis, aus alius Episcopus, prout illi placebat qui coronandus erat in Regem? Ad quæ nos, quod ex celebri gentis nostræ claret historia, respondimus, quod, eo tempore quo Anglia capta est a Normannis, Cantuariensis Ecclesia proprium non habebat Antistitem,

sed quasi captiva tenebatur a quodam Stigando, qui illam, sicut et Vintoniensem, et Londoniensem, et Vigornensiam, et Eliensem Ecclesiam, publicæ potestatis et amicorum viribus, contra inhibitionem Romani Pontificis, occupaverat, Apostolicæ sedis communione carens et gratia. Unde, et de mandato ejus a præfato Rege captus in carcere diem obiit. Qua necessitate tunc, quod nec ante, nec post, lectum est vel auditum, Archiepiscopus Eboracensis, qui clarioris erat opinionis, illi Regi coronam imposuit. Lanfrancus vero filium ejus, Regem Wilhelmum, cognomento et colore Rufum, consecravit in Regem, præsentem Thoma Eboracensi Archiepiscopo, nec in eo sibi officio aliquid vendicante. Post cujus obitum, cum sanctus Anselmus Cantuariensis Archiepiscopus exularet, ex eadem causa, qua et nos, unus suffraganeorum Cantuariensis Ecclesiæ, S. Girardus Herefordensis, vice Archiepiscopi sui tunc absentis, Regem Henricum, non contradicente Archiepiscopo Eboracensi, consecravit. Revertente autem ab exilio Beato Anselmo, accessit ad eum Rex Henricus, tradens ei diadema, et rogans ut eum coronaret, nec imputaret illi quod ipsum, necessitate Regni præpediente, non expectaverat. Fatebatur enim coram omnibus hanc esse Cantuariensis Ecclesiæ dignitatem, ut Anglorum Reges inungat et consecret. Et hac quidem satisfactione placatus Sanctus Archiepiscopus approbavit quod a suffraganeo suo factum fuerat, et Regi Coronam imposuit. Quare ergo tunc siliuit Eboracensis Archiepiscopus, et sibi Cantuariensis Ecclesiæ suffraganeum præferri sustinuit? Nunquid Thomas Senior, qui Eboracensem regebat Ecclesiam, et Lanfranco Cantuariensi, de literis et amicorum copia intumescens, multos labores texuit, et Ecclesiam suam ampliavit in plurimis, hæc obmutuisset, pauperi cedens Episcopo, nisi sibi de Archiepiscopi Cantuariensis Primatu et Dignitate constaret? Deinde, post triginta et sex annos, Regem Stephanum, prædecessorem vestrum, a decessore nostro Wilhelmo fuisse consecratum, præsentem Thurstano Eboracensi Archiepiscopo, nec se immiscente negotio, aut contradicente, certo certius est. Quo post novem et decem annos in fata collapsus, bonæ memoriæ Theobaldus Cantuariensis Archiepiscopus, qui, pro vestra promotione, cum suis omnibus, labores innumeros, damna irreparabilia, et pericula plurima, memoram et relatu horrenda, sustinuit, et Regnum, quod in aliam familiam jam transferat, Avi vestri liberis restituit, vos inunxit et coronavit in Regem,

Regem, præfente iſto Eboracenſi Rogerio qui nunc eſt, et, ut ſciſis, nec cœperante nec contradicente, nec aliquid agente, niſi eo modo quo minimus Episcoporum, facris indutus veſtibus, audiens intererat ſolemnitati. Cùm ergo tantâ facilitate animi, aut potius conſiliariorum veſtrorum pravitate, matrem veſtram, Cantuarienſem Eccleſiam, ſine cauſſæ cognitione, jure antiquo ſpoliaſtis, quod pluſquàm octuaginta annis inconcuſſe poſſeſſiſſe dignoſcitur, nûnquid perpetuare voluiſtis inimicitias inter Eccleſiam et Liberos veſtros? Aut, ſi tantum præſumptionis Eboracenſi Archiepiſcopo fuerat indulgendum, ut novo Regi munus conſecrationis impenderet, cur provinciam ſuam excedens inſaſit noſtram? cur tam ipſum, quàm ſuffraganeos noſtros, in crimen inobedienciæ impuliſtis? Receperant enim inhibitionem Domini Papæ, ne hoc in abſentiâ noſtrâ aliquo modo præſumerent. Denique, ſi ſubſtitutionem filii et conſecrationem properabatis impleri, cur eos, quos ab ore Summi Pontificis nominatim, et a nobis, excommunicatos eſſe conſtabat, a tanti ſacramenti ſolemnitate non curatiſtis excludere? Nunquid conſecratio ſine participio executionis non videbatur implenda? His, et pluribus aliis ad hunc articulum pertinentibus, quæ temporis brevitatis non admittit, diligenter et modeſte propoſitis, rogaviſſus attentius, ut hujus læſionis noſtræ jacturam, pro amore Dei, et ſalute ſua, et liberorum indemnitate, repararet, et tantæ præſumptionis emendaret exceſſum. Ille vero ſe de mandato veſtro, quod pridem obtinuerat, adverſus hanc petitionem noſtram tutum eſſe reſpondit, et ſuper hoc literas protulit, quibus conſtitit Episcopis celebraturis hoc munus ſibi indultum eſſe, ut filium ſuum faceret a quocunque vellet Episcopis coronari. Ad quod ei reſpondentes ſupplicaviſſus, ut reduceret ad animum quando et quare literas impetraret, quibus ſuum et Episcoporum defendere nitebatur exceſſum. Conſtabat enim eas, quando Cantuarienſis Eccleſia vacabat, eo propoſito fuiſſe impetratas, ne Eboracenſis Archiepiſcopus, ſi præſatam Cantuarienſem Eccleſiam diutius vacare contingeret, ad innovandi Regis coronationem præ cæteris provinciæ noſtræ Episcopis auſerit aspirare. Et ut, Domine mi Rex, hæc fidelius et familiaris recollatis, nonne tunc palam ſolebatiſſus aſſerere, quod filium veſtrum malletis decollari, quàm ut sæpè dictus Eboracenſis capiti ejus hæreticas manus imponeret? Certum vero eſt quod priori mandato per poſterius derogatur. Eſto ergo quod tunc

tales literas impetraveritis, nostræ vero, quia posteriores sunt, illis debuerant derogasse: unde constat vobis, et aliis sapientibus, cujus momenti habendum sit quod contra jus usurpatum est, præsertim cum Regis consecratio, sicut et alia sacramenta, de jure causam habeat, et totam substantiam nanciscatur. Neque hæc dicta videantur, quod degradari velimus filium vestrum, aut in aliquo minorari; quia successus ejus et ampliationem gloriæ exoptamus, et ad eam laborabimus modis omnibus in Domino; sed ut indignationem Dei, et sanctorum, qui in Cantuariensi Ecclesia requiescunt, et graviter injuriati sunt, a vobis et ab illo pariter arceatis. Quod fieri posse non credimus, nisi per condignam satisfactionem; quia à sæculis inauditum est, quod aliquis Cantuariensem Ecclesiam læserit, et non sit correctus aut contritus à Christo Domino. Subintulit ergo Rex, vultu hilari et voce jucunda: *Si filium meum diligitis, duplici jure facitis quod debetis. Nam et ego vobis illum dedi in filium, eumque, ut meminisse potestis, recepistis de manu mea. Et ipse vos tantâ affectione diligit, ut aliquem inimicorum vestrorum recto lumine nequeat intueri. Eos enim jam continuisset, nisi obstitisset reverentia et timor nominis mei. Sed scio quid vos gravius de eis, etiam quam oporteat, ulciscetur, cum citò tempus et occasiorem acceperit. Nec dubito quin Ecclesia Cantuariensis nobilissima sit inter omnes Ecclesias Occidentis, nec eam jure suo privare volo, quin potius, juxta consilium vestrum, dabo operam, ut et in hoc articulo relevetur, et pristinam in omnibus recuperet dignitatem. Illis autem, qui me et vos hæcenus prodiderunt, Deo propitio, sic respondebo, ut exigunt merita proditorum. Cum ergo equo desiliens me humiliarem ad pedes ejus, arrepto scanfili me coegit ascendere, et visus illachrymari ait: Quid multa? Domine Archiepiscopo, restituamus nobis invicem veteres affectiones, et alter alteri, quod potuerit, bonum exhibeat, et præcedentis odii prorsus finis immemores. Sed mihi, quæso, coram his qui procul adspiciunt, honorem exhibeatis. Et transiens ad illos, quia paucos ibi, quos lator præsentium indicabit, videbat amatores discordiæ, et odii incentores, ait, ut tam illorum quam omnium, nequid male dicerent, ora præcluderet: Si ego, cum Archi-Episcopum ad omne bonum paratum inveniam, ei vicissim bonus non fuero, tunc era nequior cæteris hominibus, et mala, quæ de me dicuntur, vera esse probabo. Nec aliud consilium honestius aut utilius crediderim, quam ut ipsum studeam benignitate præcedere, et tam charitate quam*

quam beneficiis superare. Sermonem Regis cum summa gratulatione fere quotquot aderant, exceperunt. Misit ergo ad nos Episcopos suos, qui monerent ut petitionem nostram coram omnibus faceremus. Et, si quorundam ex ipsis consilio credidissemus, in arbitrium ejus contulissemus prorsus et nos et totam causam Ecclesiæ. Nam ab initio usque nunc à Scribis et Phariseis suis egressa est iniquitas, et de autoritate seniorum invaluit, qui debuerant regere Populum. Sed benedictus Deus, qui non permisit, ut in consilium illorum transfret anima nostra, et Ecclesiæ libertatem aut justitiam Dei exponeremus cujuscunque hominis voluntati. Illis autem dimissis, habita deliberatione cum Domino Senonensi et Christi pauperibus, sociis peregrinationis et proscriptionis nostræ, in eo firmavimus propositum, ut nec quæstionem consuetudinum, nec damnorum quæ Ecclesiæ nostræ intulerat, nec usurpatæ consecrationis querelam, nec Ecclesiasticæ libertatis aut honoris nostri dispendium, aliquo modo conferremus in arbitrium ejus. Et sic accedentes ad Regem et suos, cum omni humilitate rogavimus per os Domini Senonensis, qui verbi nostri bajulus erat, ut nobis gratiam suam restitueret, pacem et securitatem, tam nobis quam nostris, Cantuariensem Ecclesiam et possessiones ejus, quas exceptas in chartula legerat; et ut misericorditer emendaret quod contra nos et Ecclesiam nostram fuerat in filii sui coronatione præsumptum; promittentes ei amorem et honorem, *et quicquid obsequii Regi et Principi potest ab Archiepiscopo exhiberi in Domino.* Ille verbum acceptans annuit, et ips et nostros qui aderant recepit in gratiam suam. Et quia non præceperatis, ut ipse nobis et nostris ablata restituerit, neque à nobis poterat impetrari, aut poterit, Deo authore, ut ea remittamus, juxta mandatum vestrum repetitio eorum dilata est, non sublata. Nam si, præcepissetis eo vigore, quem in novissimis expressistis, ut restituerentur, haud dubium quin satisfecisset, et posteris dedisset exemplum, toti Ecclesiæ Dei, et maximè Apostolicæ sedis, perpetuò profuturum. Tandem itaque nobiscum multa et diu conferens, cum nos duo soli fere usque ad vesperam collocuti essemus, secundum morem familiaritatis antiquæ, in hoc convenimus, ut, eo discedente, rediremus gratias acturi Christianissimo Regi, et aliis benefactoribus nostris, reversuri ad ipsum rebus compositis, et aliquamdiu moraturi circa eum, antequàm redeamus in Angliam, ut omnibus innotescat, in quantam familiaritatem

tem et gratiam nos receperit. Expectabimus autem in Franciâ donec redeant nuncii nostri, quos ad recipiendas possessiones nostras destinavimus; quia non est in animo nostro ut redeamus ad ipsum, quamdiu de terra Ecclesiæ passum pedis abstulerit. Nam in restitutione possessionum facile advertemus, quâ sinceritate agatur nobiscum. Nec tamen veremur, quin impleat quod promisit, nisi eum præpediant consilarii, quos de pravitate conscientiæ stimulus quiescere non permittit. Hi siquidem, ne comprehendantur in operibus manuum suarum, errores suos impunitate donari moliuntur, autoritate et consortio Regiæ Majestatis. Hi nos in fortem Balasitarum conantur impellere, ut, vivificantes animas quæ non vivunt, criminosos in scelere deprehenso absolvamus sine pœnitentia et confessione erroris; quam utique potestatem Deus nec alii indulget, nec retinuit sibi. Nisi adqueverimus, pacem et concordiam cum Domino Rege initam machinantur infringere. Sed, Deo authore, nec sic nos inducent, ut, sedem ponentes ex adverso Altissimi, gloriemur inaniter nos vivificare aut justificare quos ille non vivificat. Certum enim est quanticumque Pastoris sententiam jure veracissimo non tenere, si Divino judicio reprobatur. Nos tamen sub ipso discessu nostro, sive paci invidens, sive amicis et familiaribus prospicere volens, ad instantiam, sicut dicitur, Gaufrædi Cantuariensis Archidiaconi, Exoniensis Episcopus, satis argute et instanter, Rege, Episcopis, et Proceribus præsentibus, sollicitavit circa articulum istum, dicens oportere, ut, quemadmodum Dominus Rex fideles nostros in gratiam receperat, ita nos omnes qui cum illo steterant in gratiam reciperemus. Cui respondimus, "hic, si placeret illi, distinctionem necessario admittendam. Nam in cis, quorum advocationem susceperat, erant homines diversæ conditionis, alii nocentiores, alii minus, alii in communione Ecclesiæ, alii excommunicati, contra et participatione anathematis, aut sententia; alii in summi Pontificis constitutionem inciderant, et sine autoritate ejus absolvi non possunt; alii, ex variis causis, a nobis vel ab aliis Pastoribus suis justo sunt anathemate condemnati. Proinde in personis et causis tam dissimilibus ratio juris et æquitatis vetat idem esse judicium. Nos autem ad omnes, quantum in nobis est, pacem et charitatem habentes, Domini Regis audito consilio, ad honorem Ecclesiæ Dei, suum, et nostrum, necnon et salutem eorum quibus reconciliatio quæritur, negotium Deo propitio moderabimur,

bimur, ut si quis eorum, quod absit, pace caruerit, reconciliationis expers, hoc sibi, non nobis, debeat imputare." Cum autem ad hæc præfatus Gaufridus Archidiaconus, adhuc excommunicatus, sicut inceptor discordiæ, ita et contemptor justæ sententiæ, tumidus responderet, Dominus Rex, ne suborientia hinc inde verba causas odii et sopitiæ inimicitæ fomitem instaurarent, nos de turba extrahens, rogavit ne curaremus quæ dicerentur a talibus, et ut, pacato animo et tranquillo, et licentiam et benedictionem dantes, cum gratia Dei et sua rediremus ad hospitium nostrum. Postea vero accepimus, quod venerabiles viri, Dominus Rothomagensis et Episcopus Nivernensis, quos inter nos et Dominum Regem jusseratis esse mediatores, et qui de pace nostra solliciti extiterunt, Episcopo Sagiensi transeunti in Angliam dederunt in mandatis, ut excommunicatos nostros absolveret, sed incertum est, an ei formam quam illis dederatis præscriperint, aut, si præscripta est, an eam sit idem Episcopus secuturus. Verumtamen nec illis mandare licuit, nisi quatenus potestatem a vobis acceperunt, nec ille aliquid egit, si fines, quos præscriperatis, excessit. Unde si placet, necesse est, ut, si aliter absoluti sunt, præcipiatis eos sententia, qua tenebantur, arctari, donec secundum Ecclesiæ formam jurent, ut ante jusseratis, se vestro mandato parituros, et illis, qui taliter absolvi meruerint, in virtute obedientiæ injungatis, quatenus mandatum, quod eis ex parte vestra faciemus, inviolabiliter observent, vel ad vos infra terminum quem præfigetis accedant, ut audiant vestrum, subiecta pœna, nisi paruerint, ut in pristinam sententiam, sublato appellationis obstaculo, reponantur. Neque hæc dicimus, Deo teste, vindictam expetentes, cum scriptum esse noverimus, *non quæres ultionem, nec memor eris injuriæ civium tuorum*; sed ut Ecclesia correctionis exemplo possit per Dei gratiam impoſitorum roborari, et pœna paucorum multos ædificet. Nam, ut Spiritus S. author, *flagellato pestilente sapiens eruditur*. Nec vigere poterit Apostolicæ sedis autoritas, nisi percellantur et hi, qui Laïcorum patrocinio abutentes, excommunicati aut prohibiti præsumpserunt Divina celebrare. Quid enim solus Episcopus, quantumlibet Ecclesiæ Romanæ devotus, poterit, si ab obedientia ejus, ad nutum potentum, recesserint sacerdotes et clerus suus? Nihil enim est quod Ecclesiam magis debilitet, quam quod Apostolica sedes talia, cum emergunt, facile præterit impunita. Hæc dicentes scimus nobis in his exequendis, si placuerit

cuerit vobis, magnos, Deo tamen propitio vincibiles, imminere labores: Sed praelegimus arctam et angustam viam sequi, quæ ducit ad vitam, quam latam et spatiosam, quæ per illecebras sæculi trahit ad inferos. De mandato vestro, damnorum nostrorum ad præsens tacita est repertio. Placeat Serenitati vestræ, qualiter vos hic procedere oporteat a latore præsentium exaudire, et injuriam corrigere, quæ nobis et Ecclesiæ nostræ illata est in coronatione filii Regis, alio, contra morem antiquum et mandatum vestrum, invadente jus nostrum et provinciam nostram. Necessitas nos coegit excedere modum scribendi, timor et reverentia de dicendis plura reprimere compulerunt, sed Apostolica Dignatio et Clementia Paternæ Mansuetudinis immoderationi, si placet, veniam dabit, et quæ dicenda fuerant a latore præsentium solita pietate exaudiat, et petitiones, quas per eum porrigimus, celerius jubeat adimpleri.

N^o. XXI.

*Ep. lxx. l. v. Thomas Cantuariensis Archiepiscopus
Dilectæ Filiae suæ Idoneæ.*

This refers
to p. 632.
633.

THOMAS Dei gratiâ Cantuariensis Archiepiscopus, et sedis Apostolicæ Legatus, Dilectæ Filiae suæ Idoneæ salutem, et perseverantem in virtute Obedientiæ et Justitiæ zelo vigorem. Infirma mundi elegit Deus, ut fortia debellaret, intumescentemque contra Deum audaciam Holofernis, viris deficientibus, Ducibus exanimatis, et sacerdotibus fere deferentibus legem, feminæ virtus extinxit. Hæster electa est, ut exulantis et condemnatæ Ecclesiæ salutem procuraret. Titubantibus Apostolis, fugientibus, et, quod magis est, in perfidiam lapsis, Dominum passioni addictum persecutæ sunt mulieres; et, quod amplioris est fidei manifestum, etiam mortuo obsecutæ meruerunt Angelorum visu et alloquio confortari, et percipere Dominicæ Resurrectionis primitias, et, latentibus Apostolis et fere desperatione submersis, redemptoris gloriam et Evangelii gratiam nunciare. Speramus autem te in illarum, Deo authore, transituram esse consortium, quarum

quarum Christi zelo succensa apprehendis exemplum. Quia spiritus charitatis, qui a corde tuo timorem expulit, per gratiam suam faciet, ut tibi, licet ardua videantur quæ necessitas Ecclesiæ fieri constantius et instantius exigit, non modo possibilia, sed facilia sint credenti. Hac ergo de fervore, quem habes in Domino, spe concepta, tibi mandamus, et *in remissionem peccatorum injungimus*, quatenus literas Domini Papæ, quas tibi mittimus, Venerabili Fratri nostro Rogerio Eboracensi Archiepiscopo tradas, si fieri potest, præsentibus fratribus et Co-episcopis nostris; aut si eos præsentibus habere nequiveris, hoc ipsum facias in præsentia eorum quos adesse contigerit. Et, ne originale scriptum possit aliqua tergiversatione supprimi, transcriptum ejus legendum circumstantibus tradas, et eis, prout plenius te nuncius instruet, mentem aperias literarum. Labori tuo, filia, præmium grande proponitur, remissio peccatorum, fructus immarcescibilis et corona gloriæ, quam tandem *Beata peccatrices*, Magdalena et Ægyptiaca, deletis totius anteaetæ vitæ maculis, a Christo Domino ceperunt. Aderit tibi Magistra misericordiæ, Filium, quem pro mundi salute edidit, Deum et hominem, rogatura, ut is sit dux, comes, et patronus itineris. Et qui inferni claustra dirumpens Dæmonum contrivit potestatem, licentiam coarctavit, ne tibi nocere valeant, manus cohibeat impiorum. Vale, sponsa Christi, et eum cogites semper esse præsentem *.

* N. B. Some faults in the printed Bruxelles edition of this, and some other preceding letters, have been corrected from the Cottonian and other Manuscript copies.

N^o. XXII.

A Charter of King Henry the Third, in the old English of that Time, enforcing the late Provisions of Oxon.

Rot. Par. 43 H. III. m. 15. n^o 40.

This was omitted in the Appendix to the Second Book, where it ought to have been placed, as referring to p. 320 of that Book.

HENRY thurg Godes fultome King on Engle-
neloande Lhoauerd on Yrloand Duk on Normand.
on Aquitain and Eorl on Anjou. send I, greting to alle
hise holde illærde and ilewede on Huntindonschiere;
thæt witen ge wel, alle thæt we willen and unnen, thæt
ure rædesmen alle other the moare del of heom, thæt
beoth ichosen thurg us and thurg thæt *Loandes Folk*, on
ure Kuneriche habbeth idon, and schullen don in the
worthnes of Gode, and ure treowthe for the frame of
the Loande, thurg the besigte of than to foren iseide rædes-
men beo stedefæst and ilestinde in alle thinge abutan ænde,
and the heaten alle ure treowe in the treowthe thet heo
ns egen, that heo stede-felliche healden and weren to
healden and to swerien the isetnesses thæt beon makede
and beon to makien thurg than to foren iseide rædesmen,
other thurg the moare dæl of heom alswo; alse hit is be-
foren iseid. And thæt ælcother helpe thæt for to done
bitham ilche other agenes alle men [*paucula quædam hic
desse videntur; hæc scilicet aut similia*: in alle thinge thæt]
oȝt for to done and to soangen. And noan ne mine of
Loande ne of egetewher thurg this besigte muge beon
ilet other iwerfed on onicwise. And gif oni ether onie
cumen her ongenes we willen and heaten, thæt alle ure
treowe heom helden deadlichifan. And for thæt we wil-
len thet this beo stedefæst and lestinde, we senden gew
this Writ open iseined with ure Seel to halden amanges
gew ine Hord. Witness us selucn æt Lundænthane egte-
tenth day on the Monthe of Oðlobr, in the two and
fowertigthe geare of ure crunninge. And thir wes idon
æwforen ure isworen redesmen, Boncfac. Archebischop on
Kacterbur. Walier of Cantelop, Bischop of Wirechester,
Sim. of Montfort Eorle of Leichestre, Rich. of Clare
Eorl

Eorl on Glocheſter and on Hartford; Roger Bigod Eorl of Northfolk and Mareſcal on Engleloand, Perres of Sauweye, Will. of Fort Eorl on Aubem, John de Pleſſe Eorl on Warwick, Joh. Gefferees-fune, Petres of Muntfort, Rich. of Grey, Rog. of Mortemer, Iames of Aldithel, and ætforen othre moȝe.

AND all on tho ilche worden is iſend in to aurichte othre Schire ouer al thare Kuneriche on Engleneloande and ek inter Irelande.

The ſame in Modern Engliſh, translated by Mr. Somner.

HENRY, by God's help, King of *England*, Lord of *Ireland*, Duke of *Normandy*, and of *Aquitain*, and Earl of *Anjou*, Greeting to all his faithful Clerks and Laics of *Huntingdonſhire*: This know ye all well, that we Will * and Grant that which our Counſellors all, or * *Unnen*. the moſt part of them that be choſen by us, and the † People (or *Commons*) of our Land, have done, and ſhall folke ſignifies do, for the Honour of God, and of their Allegiance to the *Common* us, for the ‡ Benefit (or Amendment) of the Land, by the Advice or Conſideration of our foreſaid Counſellors, be *People, called by us Folk at this day.* ſtedfaſt and performed in every thing for ever. And we *Vid. Dr.* Command all our Liege People in the Fealty that they *Brady's Com. Hiſt.* owe us, that they ſtedfaſtly hold, and ſwear to hold [or p. 68. keep] and to defend [or maintain] the Statutes [or Provi- † *Fremer.* ſions] which he made, and ſhall be made, by thoſe aforeſaid Counſellors, or by the more part of them, alſo, as it is beforeſaid; and that they each other aſſiſt the ſame to perform, according to that ſame Oath, againſt all Men, both for to do, and cauſe to be done: And none neither of my Land, neither from elſewhere, may for this be hindered, or damnified in any wiſe: and if any man or woman oppoſe them againſt, we Will and Command that all our Liege People them hold for deadly Enemies; and becauſe we will, that this be ſtedfaſt and laſting, we ſend you this Writ open, ſigned with our Seal to be kept amongſt you in * *Store*; witneſs our ſelf at *London* the * *Hord* 18th day of the Month of *October*, in the two and fortieth Year of our Coronation; and this was done before our ſworn Counſellors, *Boniſace* Archbiſhop of *Canterbury*,
rr
Walter

APPENDIX TO THE THIRD BOOK

Walter of Cantelow Bishop of Worcester, Simon Montfort Earl of Leicester, Richard of Clare Earl of Gloucester and of Hartford, Roger Bigod Earl of Norfolk and Marechal of England, Peter of Savoy, William of Fort Earl of Aubemarle, John of Plesseiz Earl of Warwick, John Gesseriffon, Peter of Montfort, Richard of Grey, Roger of Mortimer, James of Alditby, and before others more.

AND all in these same words is sent into every other Shire over the Kingdom of *England*, and also into *Ireland*.

END OF THE APPENDIX TO THE THIRD BOOK.

N O T E S

TO THE

FOURTH BOOK

OF THE

Life of King Henry the Second.

PAGE 9. *They gave out, that such miracles were wrought by the intercession of this martyr and saint, as equalled, or even exceeded, the greatest contained in the legends of the church.*

Gervase, of Canterbury, says, that two volumes of miracles, performed by the dead archbishop, were extant at Christ Church in Canterbury when he wrote, and affirms, that they equalled all those of the gospel. In proof of which he tells us, that not only diseases of all kinds were healed by the invocation of his name, but members cut off and eyes pulled out were restored to the bodies from which they had been separated, and the dead were raised to life. “*Ad invocationem nominis ejus quæ libet infirmitate gravati convalescerunt. Quibusdam etiam genitalibus abscissis et oculis effossis nova membra restituit, aliisque morte jam depositâ vitam redonavit.*” To which Matthew Paris adds, that he also restored life to dead birds and other animals: “*Et non solum utriusque sexus homines, verum etiam aves et animalia de morte reparantur ad vitam.*” This, I presume, he did, at idle times, for amusement. But we are informed by Gervase of Canterbury, “that a priest at London, named William, was struck dumb on the feast of St. Stephen, the proto-martyr, and, by a vision, was ordered, for the recovery of his speech, to visit the body of the new martyr at Canterbury, and drink his blood. He did so, and recovered the perfect use of his tongue:”

Col. 1417.
apud Decem
scriptores.

Hist. Angliæ
P. 121.

Col. 1417.
1418.

Vol. IV. U “ ON

"on the fame of which miracle, the martyr's blood, mixt with water, was sent over the whole world, and given to the sick, who by drinking it were restored to health; as, moreover, some dead persons were to life, by having it infused into their mouths."

Hoveden,
Annal. pars
2. f. 300.
ad ann. 1171.

Nor are we to suppose that these testimonies of the sanctity of Becket were only received by the vulgar. The archbishop of Sens, in a letter to the pope, delivered to posterity by Roger de Hoveden, told his Holiness very gravely, that the wax-lights, which were placed about the corpse of Becket before his interment, happening to go out in the night, he rose up, and lighted them again himself; and that, after his obsequies were performed by the monks, as he lay upon his tier, he lifted up his right hand, and gave his benediction to all the assembly there present. One is ashamed to repeat all the shocking absurdities, which the zealots of those times were not ashamed to ascribe to the power and wisdom of God, operating, as they pretended, to the honour of this prelate, whom, on the report of his great and innumerable miracles, and on a solemn examination of them by two cardinal legates (as the words of the bull itself declare) Pope Alexander fainted. But, in an age of such easy and implicit faith, it is no wonder that his Holiness (however incredulous he himself may have been) should vouch for the truth of these ridiculous fictions, seeing that the controversy between the church and the crown would more easily be determined, to the advantage of the church, by the credit given to them, than by any other means.

V. epist. 6.
T. e. cod.
Yatic. l. v.
epist. 93.
Baronii Annales, t. xii.
p. 315.

Epist. Joh.
Scrib. 187.

"Who but a *Dæmoniack* (says John of Salisbury in one of his letters) will affirm that the cause, which crowned its patron with so much glory, was unjust?" But besides the general interest of the see of Rome, Alexander had another which was personal to himself. It is very well observed in the same letter, "that whereas many doubted whether Alexander was the true pope or not, the miracles of Becket decided that question in his favour; as they could not have been done by one engaged in a schism." This argument was conclusive; and therefore John of Salisbury not unreasonably expresses the utmost surprise, "that his Holiness should so long delay to admit Becket into the catalogue of saints." However, the delay was not long: for the canonization followed the death of that prelate within the period of two years. Nevertheless we are

are told, that in less than half a century after his decease, it was publicly disputed in the university of Paris, whether his soul was saved or damned. And the French at this time would do well to consider, what would become of the rights of their monarchy, or of the liberties of the Gallican church, if they ought, as good Catholicks, to venerate Becket, as a saint and a martyr. The points for which he contended were no less inconsistent with many of these than with the laws of this realm: nor could any man now in France maintain with impunity the doctrines and principles asserted in his letters, which are evidently those of Gregory the seventh, with respect to the extent of the papal authority, and the total independance of the church on the state. It was his zeal for this system, most intemperately exerted, which occasioned his death: and allowing the pope to be, as he is styled by some canonists, *God upon Earth*, of *that God* this great prelate was unquestionably the martyr; but (however he might herein deceive himself) the whole series of the contest between him and his sovereign undeniably proves, that he did not suffer for Christ, or any article of faith delivered in the gospel.

Du Mouli
Hist. de
Norm. p.
382.

P. 14. *The very learned bishop Stillingfleet has sufficiently shewn, that the psalter of Cashel is of no better credit, as to the account which it gives of the high antiquities of the Irish, than the British romance above-mentioned.*

The compiler of this book was Cormac Mac Culinan, bishop of Cashel in Munster, who left it by his will to that see, as containing the most valuable historical monuments and records of his country. He was also king of Munster, and exercised jointly the regal and the episcopal functions: His priesthood did not prevent him from fighting in person at the head of his army, not against the public enemies of his country and religion, the Ostmen, but against his sovereign, Flan Sionna, supreme monarch of Ireland, by whose forces, and by those of the kings of Leinster and Conaught, he was vanquished and slain, in the year nine hundred and seven, after a most bloody contest.

P. 16. *No notice is taken of them under that appellation in Ptolemy's map of Ireland, though he mentions the Concani, a Celtic people of Spain, as then settled in that isle.*

NOTES TO THE FOURTH BOOK OF

Horace mentions the Concani with the nations the most fierce and savage in his time :

“ *Visam Britannos hospitibus feros,*

“ *Lætumque equino sanguine Concanum :*

“ *Visam pharetratos Genolas,*

“ *Et Scythicum involatus amnem.*” Od. iv. L. 3.

The custom of drinking the blood of horses was common to the Concani and the Geloni : for Virgil says,

“ *Bisaltæ quo more solent, acerque Gelonus,*

“ *Cum fugit in Rhodopen atque in deserta Gëtarum,*

“ *Et lac concretum cum sanguine potat equino.*”

The Concani came into Ireland from Cantabria or Galitia : and to these Camden adds, on the authority of Orosius, the Velabri and Luceni (or Lucensii) of Galitia, as seated in West Munster. (See Camden's Britain, Ireland.)

P. 17. *For in Spain were no Druids, that order having only obtained an establishment in the British isles and in Gaul, which last country received it (as Cæsar tells us) from Britain.*

The Celtic religion was much the same in all places where it had not been altered by an intercourse with the Greeks or other neighbouring nations : but the Druidical hierarchy, and the several institutions peculiar to that priesthood, do not appear to have been settled in any other country than those above-mentioned. As the subject is curious, and belongs to the ancient history of Britain and Ireland, I shall give the reader some thoughts which have occurred to me upon it in a dissertation annexed to the end of this volume.

P. 20. *And, in the usual course of things, Ireland, besides the chief monarch, who governed the whole island, had five provincial kings, &c.*

It must be understood, that when one of these five provincial kings obtained the monarchy, or sovereignty, of the whole island, he continued, as before, to govern his own realm, according to the laws and customs thereof ; as an elector of Bavaria, chosen emperor of Germany, would continue to govern his electorate ; which province would be subject to the Imperial crown and the laws of the empire, neither more nor less than it was before that event.

P. 22. *The royal revenues of the monarch, after this alienation, consisted in tributes, not of money, but cattle, and other necessaries of life, paid to him in kind. The inferior kings had such tributes, which their subjects paid to them, &c.*

Dr. Warner has given us, in his history of Ireland, ^{L. x. p. 423.} from the book of rights of Munster, which, Dr. Raymond says, is the oldest book of history extant next the Greek and Roman, the amount of the revenue sent every year to the palace of Kincora in that province, viz. fourteen hundred and fifty oxen, three thousand six hundred and fifty cows, four thousand eight hundred hogs, two thousand six hundred wethers, one hundred horses, and eleven hundred and fifty mantles; besides contributions of men and ships from the Ostmen. But I neither warrant to the reader the authenticity of this book, nor another account in Dr. Warner's history of the provinces of that island, viz. ^{Ibidem;} two thousand six hundred and seventy oxen, one thousand three hundred and seventy hogs, one hundred and eighty tons of iron, three hundred and twenty-five hogsheds of claret from the Danes of Limerick, one hundred and fifty pipes of other wine of various sorts from the Danes of Dublin, and five hundred mantles from the county of Tirconnel.

P. 31. *The particulars of this battle are so differently related, that no certain account can be given of it here.*

Some say that Brian Boro commanded in it himself, and was victorious, but died soon afterwards of a wound he had received in the action. Others tell us, that the Ostmen, who were beginning to give way, recovered their fainting courage upon seeing him fall, and defeated the Irish: while some affirm, that his age disabling him from acting at the head of his army, he gave up the conduct of it to Prince Murtoigh his son, and was killed in his tent by a party of the Ostmen, who were flying from the battle, in which they had been vanquished. But this last account appears extremely improbable; as the tent of a king is seldom left without a guard, nor do routed soldiers fly into an enemy's camp. A strange story is also told, by some of the Irish writers, of the manner in which Murtoigh, the son of Brian, was slain. They say, that a son of the king of Denmark lay wounded upon the field of battle, and implored the help of
that

that prince, who was riding over it in pursuit of the army he had routed: whereupon he dismounted, and giving his hand to the Dane, was stabbed by him to the heart. But such perfidy, and such enormous ingratitude, where no personal cause of malice, or instigation to revenge for private injuries, could exist, scarce belong to human nature; and it is more credible that this tale was invented by the Irish in hatred to the Danes.

P. 33. *The information he soon gained of the weak condition of Ireland made him hope to add that to his other acquisitions, and this hope was to him a sufficient cause of war, &c.*

If we may believe the Chronicle of Man, published by Camden at the end of Britannia, this prince, having gained the dominion of that isle and the western isles of Scotland, sent a pair of his shoes to king Morrogh O'Brian, supreme monarch of Ireland, and commanded him to carry them, as a sign of subjection, in presence of the ambassadors who brought him this message, through all the rooms of his palace, on the next Christmas-day. The court of O'Brian expressed a proper indignation at so arrogant a demand; but he told them, that rather than Magnus should ravage a single province of Ireland, he would not only submit to carry, but to eat his shoes. Accordingly he performed this new species of homage, and having honourably entertained the Norwegian ambassadors, sent them back to their master with many presents for him, and made with him a league of friendship. But they, at their return, describing to that prince the fertility and beauty of the country they had seen, he coveted to possess it, and attempting the conquest of it perished in the manner here related.

If there be truth in this story, the tameness of O'Brian, in submitting to the insolence of so opprobrious a message, must be chiefly imputed to an eager desire of subduing his competitor, David O'Lachluin, by the assistance of Magnus. But it does not seem very credible, and no mention is made of it in the Irish annals of those times.

P. 43. *And Bernard says, that, when he first went into Conaught, he found the people of that country more barbarous than any he had ever seen elsewhere, being Christians*

tians only in name, but in reality beasts, and beasts rather than men; that they paid no tithes nor first-fruits, contracted no lawful marriages, made no confessions, submitted to no penances, &c.

Some of these charges against the people of Conaught are proofs of their not being then Roman Catholics, but not of their being bad Christians. Yet the account given of them in this passage by Bernard was in other respects too well founded, and corroborates what is said of the barbarism of the Irish by Giraldus Cambrensis: for, tho' Conaught was the most savage part of their island, yet (excepting the districts then possessed by the Ostmen) the rest of the country could not boast of much greater refinements, or of much better morals; the faults of the government, and the general customs of the nation, being the same in them all.

Ibidem. But that, by the care of this prelate, a great change was soon effected in all these particulars.

In describing this change Bernard uses this expression, *v. s. Bernard, in vita Sti. Malachie, Episc. Bernardi opera, edit. Paris, p. 1936.* "Fiunt de medio barbaricæ leges, Romanæ introducuntur." It may be doubted whether here by *leges Romanæ* be meant the civil laws or the canon. But the following words seem to fix the sense of the latter. "Rejiciuntur ubique ecclesiasticæ consuetudines, contrariæ reji-
ciuntur." Perhaps the epithet *Romanæ* included both; as we find it does in other writings of the same age. In order to enable Malachy to bring about this conversion of the Irish to the discipline and canons of Rome, Bernard affirms, that he had received the power of working miracles in as eminent a degree as any of the ancient saints of the church. "Quo enim antiquorum genere miraculorum Malachias non claruit? Si bene advertimus pauca ipsa quæ dicta sunt, non prophetia de-
fuit illi, non revelatio, non ultio impiorum, non gratia sanitatum, non mutatio mentium, non denique mortuorum suscitatio." One of these miracles was the punishment, by sudden death, of a man, whom the saint could not convince of the real presence in the sacrament. See p. 1950. But, that the reader may judge of the credit due to the relator of these wonderful works, I shall transcribe an account he gives of two, that were performed in an oratory built by Malachy, p. 1944. "Mulier totis dissoluta membris, plausro vecta illuc, pedibus suis remeavit domum,

“mum, unâ duntaxat nocte non frustra in loco sancto
 “præstolata misericordiam domini. Alia quædam ibidem
 “pernoctabat in oratione, quam forte reperiens solam
 “homo barbarus, accensus libidine, et sui minimè com-
 “pos, irruit rabiosus in illam. Conversa illa et treme-
 “facta suspiciens advertit hominem plenum diabolico spi-
 “ritu. Heus tu, inquit, miser, quid agis? Considera ubi
 “es, reverere hæc sancta, defer Deo, *defer servo ipsius,*
 “*Malachiæ,* parce et tibi ipsi. Non destitit ille furiis
 “agitatus iniquis. Et ecce (quod horribile dictu est) *ve-*
 “*nenatum et tumidum animal quod bufonem vocant, visum*
 “*est reptans exire de inter femora mulieris.* Quid plura?
 “*terresæclus resiliit homo, et datis saltibus continuo de ora-*
 “*torio exiliit.* Ille confusus recessit, et illa intacta re-
 “mansit, magno quidem et Dei miraculo, et merito *Malachiæ.*”

What must one think of all the legends, on which the church of Rome has built her faith in the saints she has canonized, when he who tells us so seriously this ridiculous tale, *for the edification of the faithful, and for the honour of St. Malachy,* is no less a personage than St. Bernard, one of the oracles of that church! But that the bigotry of those times should receive even these fables with a pious veneration, when told by learned monks and founders of orders, is not half so surprising, as that in the present age, and in a country so enlightened as England, the miracles of Becket, as incredible as those of Malachy, and reported by writers whom no papist will think of greater authority than St. Bernard, should be still urged as an undeniable proof of the sanctity of his cause.

See Philipps,
 Life of Car-
 dinal Pole.

P. 46. *Moreover Giraldus Cambrensis, in reckoning up the claims which Henry had to Ireland, mentions this grant of Adrian, &c.*

Among these are some fables, for which Giraldus cites the British history, meaning Nennius and Geoffry of Monmouth. But (what is much more surprising) the Irish parliament, in an act of the eleventh year of Elizabeth, sess. 3. for the attainder of Shane Oneile, has recourse to the same fables to prove her Majesty's title to the dominion of Ulster superior to his. I will transcribe the words as they stand in the act itself. “And therefore may it

See Irish Sta-
 tutes, vol. I.
 p. 328, 329.

“please your most excellent majestie to be advertised,
 “that the auncient chronicles of this realm, written both
 “in

“ in the Latin, English, and Irish tongues, alledge sundry auncient titles for the kings of England to this land of Ireland. And first, that at the beginning, afore the coming of Irishmen into the sayd land, they were dwelling in a province of Spain, called Biscanon, whereof Bayon was a member, and the chief titie. And that at the sayd Irishmens coming into Ireland, one king Gurmonde, sonne to the noble king Belin, king of Great Britaine, which now is called England, was lord of Bayon, as many of his successors were to the time of king Henry the second, first conquerour of this realm, and therefore the Irishmen should be the king of England's people, and Ireland his land. Another title is, that at the same time that Irishmen came out of Biscay as exiled persons in sixtie ships, they met with the same king Gurmonde upon the sea, at the yles of Orcades, then coming from Denmark with great victory, their captaines called Hiberus and Hermon, went to this king, and him told the cause of their coming out of Biscay, and him prayed with great instance, that he would graunt unto them, that they might inhabit some land in the West. The king at the last, by advise of his counsel, graunted them Ireland to inhabit, and assigned unto them guides for the sea to bring them thither; and therefore they should and ought to be the king of England's men.”

Ibidem. And it appears from the words of John of Salisbury himself, whom Henry employed in this business, that his pretension was founded on the forged donation of Constantine to Pope Sylvester the second.

The words are these. “ Ad preces meas illustri regi Anglorum Henrico secundo (Adrianus) concepit et dedit Hyberniam jure hæreditario possidendam, sicut litteræ ipsius testantur in hodiernum diem. Nam omnes insulas de jure antiquo, ex donatione Constantini, qui eam fundavit ac dedit, dicuntur ad ecclesiam Romanam pertinere.”

P. 50. *She made a donation of sixty ounces of gold for the good of her soul, and gave a golden chalice, for the altar of the blessed Virgin, with many other rich gifts, to the abbey of Drogheda, &c.*

The gold, which it appears, by this and other passages in the history of those times, the princes of Ireland then possessed,

possessed, was the produce of their commerce with the Ostmen inhabiting their principal cities, who purchased with it their cattle and other commodities which their country afforded. Dr. Warner has given us, in his history of Ireland, the will of Cormac king of Munster and bishop of Cashel, in which (as that writer says) his legacies to abbeys and religious houses are thus enumerated :
 “ An ounce of gold, an ounce of silver, his horse and furniture to Ard-finnan ; a gold and silver chalice and vestment of silk to Lismore ; a gold and silver chalice, four ounces of gold and five of silver to Cashell ; three ounces of gold and a mass-book to Emly ; an ounce of gold and an ounce of silver to Glendalach ; a horse and furniture, an ounce of gold, and an embroidered vestment to Kildare ; three ounces of gold to Iniscathy ; three ounces of gold, an embroidered vestment, and his blessing to Mountgaret ; and four and twenty ounces of gold and silver to Armagh ; besides legacies to his friends, amongst which was a golden chain, and a royal robe embroidered with gold and jewels.” On which the Doctor remarks, “ That if we consider the excessive scarcity of gold and silver in those times, compared with their infinite profusion at present, these were not inconsiderable trifling benefactions for a provincial king.” But he does not tell us that he ever saw this will, or on what authority he admits it as a genuine record.

P. 55. *Very early in the spring he sent Maurice Regan, his interpreter and secretary, &c.*

There is in the Lambeth library a manuscript poem, in old French or Norman verse, on the subject of Dermot's expulsion from his kingdom, and recovering it by the aid of the English and Welsh, which was written by some English or Norman rhymers of that age, *from the mouth of this Maurice Regan*, as we are told by the author at the beginning of his work.

“ Per son demeure latinier
 “ Qe moi conta de luy l'histoire
 “ Dunt sar ici la memoire.
 “ Morice Regan iert celuy
 “ Buche à buche parla a luy
 “ Ki cet jeſt indita.
 “ L'histoire de luy me moſtra.

“ Ici

" Icil Morice iert *latinier*

" Al Rei Dormot, ki moult voucher."

I have shewn these lines in the Lambeth manuscript to a learned critic in the old French or Norman language, who says, that *demeine latinier* signifies *familiarem grammaticum*. Some writers have rendered *latinier* (or *latinier*, as it is in other copies) by the word interpreter, and others by the word secretary; both which senses it will bear. In another line of the same poem Regan is called *Bachelier del Rei Dormot*. The person I consulted understands the word *iert* to signify *etoit* in modern French. He also reads *ces gestes* instead of *ces jests*, as it stands in the Lambeth manuscript. *Ki* is the old way of writing *Qui*, and *out* of writing *eut*. It must be likewise observed that *monstra l'histoire* does not necessarily mean, in the strict sense of the word, that he shewed a written history, but may signify that he instructed him in the history of these facts by a verbal relation, which agrees better with the two preceding lines.

Some historians have cited this poem as the work of Maurice Regan himself, which is evidently a mistake; and others have supposed it a translation into verse of a history written by him in prose: but, that he ever had published or composed such a history, I cannot discover. No notice is taken of it by Giraldus Cambrensis, or any writer of that age; nor does it appear that any copy, or authentic transcript of it, has been ever seen since that time. A prose translation of the poem into the English language was made by Sir George Carew, Lord President of Munster, during his residence there, in the reign of Queen Elizabeth, and has been published by Mr. Harris among his *Hibernica*, in the year 1747, with explanatory notes. In the translator's preface the verses above recited are given from another manuscript copy, but still more incorrectly than in that which I have followed. Both of them seem to want mending. I cannot think that this rhyming chronicle, drawn from a verbal relation, imperfectly recollected, and mixed with other hearsays, picked up, we know not how or from whom, is of equal credit with the history of Giraldus Cambrensis, whose near kinsmen were actors, and principal actors, in most of the facts he relates; especially, as that historian himself afterwards went into Ireland, and from the time he staid there

had

had opportunities of hearing the Irish accounts, as well as the English, of all those recent transactions. In his *Topographia Hiberniæ*, we find, indeed, many idle and incredible tales, for which he himself makes excuses: but in his history of the conquest of Ireland by the English he proceeded on better information. The greater part of that work is sensibly written; nor does he any where more extoll the valour of his countrymen in the actions of this war, or more depreciate the Irish, than the writer of the poem above-mentioned. I have therefore thought it reasonable to prefer his authority to that of the poem in most points of importance, where they cannot be reconciled, the one to the other. But I have added from the latter some particulars which the former does not contradict, and which seem not unworthy of belief.

As for what had passed in Ireland during the times that I write of, before the English adventurers in Dermod's service went thither, the best authorities for it are the Annals of Ireland, compiled by contemporary writers, with extracts of which, translated from the original Irish, I have been favoured by a gentleman well skilled in that language, Charles OConor, Esq; who with the noble Irish blood which flows in his veins has naturally inherited a passionate love for the honour of his country, and therefore willingly assits in any undertaking that may render the history of it more known and more complete. The disagreement of the poem above-mentioned with these annals, in very material facts, is another proof that it could not be written by Regan, or from any memoirs composed by him. It appears from them, that the rape of Devorgalla by Dermod was fifteen years before the expulsion of that king, when the lady was in the flower of her youth and beauty, and Dermod not too old to be her lover: but the poem supposes this event to have happened a little before his expulsion, when (according to the annals) he was approaching to the 70th year of his age. Giraldus Cambrensis has fallen into the same error: but no native of Ireland could have been guilty of it, and much less the secretary of Dermod. There are other such mistakes, and particularly some in the geography of the country, which demonstrate this poem to have been written by a foreigner, and from loose accounts, not delivered, revised, or corrected, by any of the Irish.

The

The annals I have followed are, like our Saxon annals, very short, jejune, and dry; but they throw light on some facts, and correct great inaccuracies in our English historians with relation to the state of Irish affairs preceding the arrival of Fittstephen in Ireland; nor have they any mixture of those incredible fables, with which the former parts of the history of that nation are generally filled. Mr. OConor distinguishes them by the following names, The Donegal Annals, or of the Four Masters, continued. The Annals of Clonmacnose, or Continuation of Tighernach.

P. 57. *Harvey of Mount Maurice, Strongbow's uncle, was deputed by that lord, &c.*

The name of this gentleman in the books and charters of those times, which are written in Latin, is *Herocius de Monte Marisco*. Mr. Carte, on the credit of a modern French Genealogy, has translated it Momorency; but I see no grounds for deriving the one from the other. Perhaps *de Monte Marisco* should be rendered *de Mont Marisque*; but Mont-Maurice, or Mount-Maurice, according to the English spelling, has been the usual translation.

P. 60. *Dermot prevailed on Fittstephen to continue this war by repeated expeditions, till having received intelligence, that the whole Irish nation, under the orders of Roderick OConor, their sovereign, was now arming against him, he granted a peace to the prince of Ossory, &c.*

The historical poem, of which mention has been made in a former note to this book, says nothing of this peace, nor of the subsequent negotiations with Fittstephen and Dermot, on the part of the king of Conaught, which I have given an account of, from the contemporary history of Giraldus Cambrensis. But it mentions an expedition against an Irish chieftain who had revolted from Dermot, about which Giraldus is silent. The particulars are not worth repeating here, as that lord made no resistance, but suffered his country to be pillaged without defence. We have likewise in that poem an account of a second incursion into Ossory, before the arrival of Maurice Fitzgerald at Wexford, which tells us, that in assaulting a fortified pass of that country, the men of Wexford, to whom the attack was first assigned, though they went on with much
courage;

courage, were yet repulsed by the enemy three days successively; after which it was attacked by the English and Welsh, who put the Irish to flight. Probably this action is included in the short and general relation which Giraldus makes of the war against the prince of Offory, c. 4, 5. l. i.

P. 64. *These thoughts he (Dermot) confided to Fitzstephen and Fitzgerald, who advised him, as the only means of success in so arduous a design, to renew his applications to the earl of Pembroke, &c.*

Giraldus Cambrensis adds, that he offered to either of these gentlemen his daughter Eva in marriage, with the succession to his kingdom, which could not be accepted, as both of them were married. But it seems incredible, that this circumstance should have been then unknown to Dermot.

P. 70. *But that monarch, instead of causing (as he ought to have done) some other prince of the royal house of Meath to be regularly elected, made ORuark a temporary administrator of the eastern part of that province, and retained the western himself.*

Giraldus Cambrensis, and other English historians, who wrote in those times, call ORuark *King of Meath*, not distinguishing this temporary administration (which the Irish annalists tell us was given to him before, and continued some time after the coming of the English into Leinster) from the royalty of Meath, which ORuark could not take by the Irish constitution and fundamental laws, because he was not of the family to which the election of a king of that realm had been confined. Our writers sometimes call him *Rex Monoculus Mida*, because he had but one eye. His name is sometimes written ORouark, or ORorick; but in this and other Irish names I follow the orthography of Mr. OConor.

P. 74. *This blockade, which entirely prevented the importation of any provisions, had continued almost two months, &c.*

V. Harris's
Hibernica,
p. 11, 12.

The historical poem on the subject of this war (an account of which has been given in some former notes to this book) says, that Strongbow, induced by the danger he

was

was in of perishing by famine, sent Lawrence O'Tool, the archbishop of Dublin, to negotiate with Roderick, and offer that king, if he would raise his siege, to hold Leinster, as his vassal, by homage and fealty; which Roderick proudly refusing, and insisting, that the earl should give up all his conquests, and with all his forces leave Ireland at a day assigned to him, Milo de Cogan proposed that desperate sally, which presently afterwards raised the siege. But Giraldus Cambrensis (whose authority I greatly prefer to that of this unknown rhymist, for reasons before given) says nothing of this offer.

- P. 75. *Few were saved; the English cavalry intercepting their flight, an Irish chieftain, or prince, who had given hostages to the governor, joining in the pursuit with all his clan.*

The historical poem, cited in the foregoing note, says, ^{Lambeth MS. See also Harp's Hibern.} that Milo de Cogan, before the action began, addressed the Irish chieftain, here mentioned, in these words: "If you perform what I require of you, I will restore to you your hostages safe and free: but you must first take an oath, that, when the enemy and we shall fight, you and your men will stand in some convenient place, where you may behold our actions as neutrals; and, if you shall see that they faint and fly before us, help us to kill them; but if we, like cowards, turn our backs, and are pursued, kill as many of us as you can, that we may not die by their hands." The author adds, that, hereupon, the Irish chief took the oath, and posting himself near the wall with a body of his people, as soon as he saw the Norwegians routed and flying, eagerly followed the chace, and slew as many of them as the weapons of his men could reach. But of this very extraordinary speech and oath nothing is said by Giraldus Cambrensis, or in the Irish annals.

- P. 78. *On his way he was stop'd, in the country of Idrome, at a narrow pass, which O'Ryan, the petty prince of that district, had seized and fortified.*

We are told by Stanishurst, in his book *de Rebus in Hybernia gestis*, l. iv. p. 171, 172. that, in one of these actions against the Irish, Strongbow with his own hand, in the presence and view of his army, slew his only son, a youth of about sixteen years old, who at the head of a troop

troop of horse had charged the enemy, and, finding they did not give way, returned back with his men to the body of the army, commanded by his father. In proof of this the historian alledges two monuments in a church at Dublin, one of Strongbow, on which is a marble statue of that earl; and another of his son, on the left-hand of the earl's, which has also upon it an image, representing that youth, holding up, with both his hands, his entrails, which seem falling out. These figures (Stanihurst tells us) by the fall of part of the church, in the year 1566, were much defaced, but repaired and beautified by order of Sir Henry Sidney, who was then lord lieutenant of Ireland. Another modern historian of the same country says, that on the tomb of the son these verses were engraved:

" Nate ingrate, mihi pugnante terga dedisti;

" Non mihi, sed genti, regno quoque, terga dedisti."

See Hamner
Chron.
p. 146.

At what time these two monuments were first set up we are not told; but Stanihurst speaks of them as ancient, and adds, that the fact was *omnium sermone celebratissimum*. To me it seems, that the story was merely traditional, and that, without much enquiry into the truth; the son's statue was erected by some of the English at Dublin, in the attitude here described: for there is not the least mention of it in Giraldus Cambrensis, or any contemporary writer; and it is hardly possible that they all should have omitted to take notice of so remarkable a fact, which, if it had really happened, could be no secret.

P. 80. *On receiving this message, he turned aside from Wexford, and went to Waterford, &c.*

See Harris's
Hibernica,
p. 13, 14.

In the historical poem before-mentioned an account is given of some matters, transacted between Strongbow's arrival at Waterford and his going into England, of which no mention is made in Giraldus Cambrensis or in the Irish annals. I will deliver it to the reader as translated into English prose by Sir George Carew. "The earl was no sooner come to the city, but a messenger from OBrian, king of Limerick, repaired unto him from his master, praying him with all his forces to march into Ossory against Donald, that common enemy, (*viz.* Donald king or prince of Ossory). The cause of friendship between the earl and OBrian was, that OBrian had married one of the daughters of Dermot, king of Leinster, and

" and half sister to the earl's wife. Unto the message the
 " earl made answer, that he would satisfy OBrian's re-
 " quest; and they met at Idough, and, being joined,
 " their forces were two thousand strong. Donald, fear-
 " ing the approach of his enemies, sent to the earl to de-
 " sire him that he might have a safeguard to come unto
 " him, and that he doubted not but to give him satisfac-
 " tion. The request was granted, and Maurice de Pren-
 " dergast was sent for him; but he, for the more secu-
 " rity, obtained the words of the earl and OBrian, and
 " the oaths of all the chieftains of the army, that the
 " king of Ossory should come and return in safety;
 " which done, he went to Donald, and within a few
 " hours he brought him to the camp, in the presence of
 " all the army. The earl and OBrian charged him with
 " divers treasons and practices, which he had attempted
 " against his lord, the king of Leinster, deceased; and
 " OBrian and all the captains disallowing of his excuses,
 " counselled the earl to hang him; and OBrian, without
 " delay, commanded his men to harrafs and spoil Donald's
 " country, which willingly they performed. Maurice de
 " Prendergast, misliking these proceedings, and seeing
 " the danger the king of Ossory was in, presently mounted
 " on his horse, commanded his company to do the like,
 " and said, " My lords, what do you mean to do?" and
 " turning to the captains he told them, that they disho-
 " noured themselves, and that they had falsified their
 " faiths unto him: and sware by the cross of his sword,
 " that no man there that day should dare lay hands on
 " the king of Ossory; whereupon the earl, having sense
 " of his honour, and calling to mind how far it was en-
 " gaged, delivered Donald unto Maurice, commanding
 " him to see him safely conveyed unto his men. Upon
 " the way, in their return, they encountered OBrian's
 " men, laden with the spoils of Ossory. Prendergast
 " charged them, slaying nine or ten of these freebooters:
 " and having brought Donald to his men, lodged with
 " him that night in the woods, and the next morning re-
 " turned to the earl."

What credit this story, unsupported by the testimony
 of any other writer, may be thought to deserve, I cannot
 tell: but it is not improbable, and (supposing it true) does
 very great honour to Maurice de Prendergast.

V. Hibern.
p. 8, 9.

We learn from the same authority, that some time before this, in the year 1169, Maurice de Prendergast, having had a quarrel with Dermot, in whose service he then was, entered into that of this Donald, prince of Ossory, and led away with him two hundred soldiers, at the head of whom he served the latter against the king of Leinster, and against OMore, lord of Leix, which territory contained a great part of that province now called the Queen's County. He forced OMore to submit, and give hostages to Donald; but afterwards was obliged by Dermot and the English, whose assistance OMore had secretly implored, to retire out of Leix; and, at his return into Ossory, he and all his Welsh band would have been treacherously murdered by the people of that country for the sake of their spoils, and to save the wages due to them, if Donald had not preserved them, by refusing his assent to so villainous a design. It seems he desired that they should stay in his service; but, they resolving to return immediately into Wales, his subjects resumed their ill intentions against them, and way-laid them in a pass between Kilkenny and Waterford with two thousand men, of which Prendergast having fortunately received information, he escaped the danger, by pretending to make a new agreement, that he and his men would serve the prince of Ossory some months longer; on the news of which the ambuscade abandoned the pass, and the Welsh, by a midnight march, got safe into Waterford, and from thence into Wales, out of which Prendergast afterwards returned into Ireland. He now repaid Donald, for having protected him as far as he could against the perfidy of his people, by guarding him in the manner above-related.

P. 14.

The poem adds, that after the return of that prince, O'Brian went back to Limerick, and the earl of Pembroke to Fernes, where he remained eight days, in which time Murrough OByrne, who ever more had been a traitor to king Dermot, was brought prisoner to him, and was immediately beheaded, and his body was cast to the dogs, and with him a son of Daniel Kavenagh. But at the same time the earl gave to Donald Kavenagh, the son of Dermot, lands in Leinster, and to another Irishman, who had deserved well of him, the country of Kinselagh. I thought it worth while to mention these circumstances from this anonymous writer, yet observing, that Sir James Ware takes no notice of either of these grants

grants (probably because he did not find any authentick proof of them) though he transcribes from this poem several other grants there mentioned. For what reason this whole account of Prendergast's adventures (if we suppose it true) is omitted in the history of the conquest of Ireland by Giraldus Cambrensis, it is hard to conceive. I will only add, that the prince of Ossory, here called Donald, and whose surname was Fitz-patrick, in the Irish annals is called Donchad.

P. 80. *He did so, and found him at Newnham in Gloucestershire, preparing to pass, with an army, into Ireland.*

Gervase of Canterbury says, that common report assigned three reasons for this expedition of the king into Ireland. One was, that the kings and people of that island had sent ambassadors to implore him to come to their assistance against the hostilities of the earl of Pembroke, and to take upon himself the dominion of Ireland: another was, that the said earl had offered to hold his acquisitions under him: and the third was, that he might more easily avoid, or be less exposed to, the ill effects of a sentence of interdict, if any such should be pronounced: which this author conceives to have been his principal motive. The first of these supposed reasons would, if the fact had been true, be very important, with respect to the foundation of Henry's title to Ireland; but, as no mention is made of it in any record of that time, or in the history of this transaction by Giraldus Cambrensis, I judge it to be a false report. Nor can I think that the fear of a sentence of interdict being laid on his kingdom would have induced him to quit it; but, on the contrary, I presume it would have been a strong reason for his delaying this enterprise till that danger was over, if he had really feared it, which he did not at this time. The fair opportunity which offered itself to him, of acquiring to his crown the dominion of Ireland, and the danger of leaving it in the earl of Pembroke's possession, independent on that crown, were the only real motives of this undertaking.

V. Chron.
Gerv. sub
ann. 1171.
col. 1419,
1420.

P. 85. *Soon after the king's arrival at Waterford, the citizens of Wexford brought to him their captive, Fitz-Stephen, a criminal, in bonds, &c.*

See Lambeth MS. and Harris's *Hibernica*, p. 16.

The historical poem, often mentioned in the former notes to this book, says, that when Henry lay at Pembroke, several of the Wexfordians who held Fitz-Stephen prisoner, passed the sea, and procuring admittance to that king, beseeched him to accept them as his humble servants, saying, "That they purposely came to him to let him know, that they had in their prison Robert Fitz-Stephen, who had always been a traitor to him, and had rebelled against him both in Wales and England, and that they would deliver him into his hands to do his pleasure with him." They also complained, "That he had wrongfully, with forces, entered into Ireland, slain many of their people, burnt their towns, and destroyed their country. The king bad them welcome, thanking them for their good service done to him in taking such a notorious traitor; and told them, they should see that he would, as soon as he came into Ireland, punish Fitz-Stephen according to his demerit; and so he dismissed them to their contentment." But this writer adds, "That the reason which moved the king to seem so highly offended with Fitz-Stephen proceeded out of his fear, that if he had not given them a pleasing answer, as he did, in their malice and fury they would have murdered him in prison."

What is here said of this gentleman's having rebelled against Henry both in Wales and in England, is not agreeable to any accounts of his conduct from other writers of that age. The rest may be true; yet the silence of Giraldus Cambrensis about it renders it very doubtful; as that author could hardly be ignorant of a fact so public as this, in which his near kinsman was concerned, and which he had no interest to conceal. I therefore chuse to follow him in dating the first application of the men of Wexford to Henry, on the subject of Fitz-Stephen, at Waterford, not at Pembroke.

P. 89. *Others were made for the particular benefit of the clergy, to enforce the payment of tythes to the parochial priests, to exempt all the lands and possessions of the church from all impositions exacted by the laity, particularly those most usual in Ireland, &c.*

Mr. Carte and other modern historians suppose, that the fourth canon of this council was made against *Coign and Liverry*: but these were impositions introduced into Ireland

Ireland by the English in later times, yet of much the same nature with what the Irish called *Bonaght*, to which, and another customary exaction, called *Cosherings*, this canon had a particular reference. (See Sir J. Ware, c. 8, and 18. Sir J. Davies, p. 175 and 244.)

P. 100. *All these injunctions the legates, by the authority of the pope, commanded the king to observe with truth and sincerity, for the remission of his sins; because, (as they set forth in the preamble to the articles) though he had taken in their presence a voluntary oath, that he neither ordered, nor desired, the murder of Becket, and was exceedingly grieved when the report thereof was brought to his ears; yet he feared, that the malefactors who had slain that prelate took occasion to commit that wicked act from the passion and perturbation they saw in him.*

Gervase of Canterbury has added to what the legates say on this point, that he took this oath because the above-mentioned malefactors were out of his power, "*quia malefactores illos qui præfatum archiepiscopum occiderunt habere non poterat*," although (says this author) they had passed some time with him in the pleasures of hunting, after the crime was committed, ("*qui tamen in deliciis venationum aliquandiu postea fuerant cum ipso commorati*."") But the silence of all other writers contemporary with Henry, and the accounts given by some who lived in those days, entirely refute this calumny on that prince. Indeed he must have been absolutely out of his senses, to admit to his presence and pleasures men guilty of a crime which he took such pains to disclaim, and for which they were actually under a sentence of excommunication, while he himself was suing to be absolved from the guilt of having given occasion to it, though against his will. Coller. 1422.

P. 101. *And to the church he gave up nothing by the terms of this agreement, which he had not before proposed to yield.*

This appears from what is said in the text on this subject, and the authentic testimony there recited. Yet, in an extract from Alanus in *Historia Quadripartita*, which is printed in the fifth book of Becket's epistles, and called the 88th letter, after mention made of the article, by which the king was enjoined to give up all customs introduced in his times against the church, there is this additional clause, *Si quæ autem malæ fuerunt ante tempora sua,*
illas

illas juxta mandatum D. Papæ, et consilio religiosorum virorum temperabit. But neither this, nor any other passage in the history, or even the letters of those times, can be of any authority against the charter, or public instrument of the reconciliation, drawn up by the cardinals who were employed therein, sealed by the king himself, and sent to the pope as a record of the conditions on which it had been granted. If any other evidence could be wanting, the next best is the letter written by the king on the subject of this transaction, and that from the cardinals to the archbishop of Ravenna; but in none of these is any mention made of this clause. I therefore reject it as false. It must be also observed that many ancient historians date the time of this transaction on the fifth of the calends of October, in the year 1172: but it appears by the charters, by the letter of the two legates, and by that of the king above-mentioned, which cannot err in this point, that it was concluded before the feast of Pentecost in that year. The invention of the Popish clergy has been wonderfully fertile in forgeries on this matter. Nicholas, cardinal of Arragon, who flourished about the year 1350, in his lives of the Roman Pontiffs, (edit. Mediolan. 1723.) has these words, "*Præterea ego et major filius meus rex juramus, quod à Dom. Alexandro Papâ, et ejus Catholicis successoribus recipiemus et tenebimus regnum Angliæ, et nos et nostri successores in perpetuum non reputabimus nos Angliæ reges veros, donec ipsi nos Catholicos reges agnuerint.*" A most impudent falsehood, without the least foundation or colour of truth!

Almost all the other parts of this pretended oath are differently worded from that which the two legates, in whose presence it was made by the king, and who absolved him thereupon, declared to the world by the public instrument before mentioned, which the reader may see exactly transcribed in the appendix to this book.

There is likewise a revocation of the Clarendon constitutions, pretended to have been made by the king before the same legates, and entitled *Revocatio Articulorum quas rex Henricus secundus voluit ecclesiam Anglicanorum observasse*, of which I have seen a copy. It appears to have been forged by some English monk, and wants no other confutation than the undeniable testimony of the legates themselves.

P. 102. *And concluded by saying, that they were all traitors, who did not diligently endeavour to deliver and free him from the hostile attacks of this one man.*

The words in the original are, "*Quod omnes proditores erant, qui eum, adhibitâ operâ et diligentia, ab unius hominis infestatione nolebant expedire.*"

P. 104. *For it appears by records, that Hugh de Morville was alive in the second year of king John, &c.*

A pedigree of the Dacre family drawn up from authentic records and evidences, both public and private, by Richard St. George Norroy, king of arms, and signed by him, and by William Camden Clarencieux, agrees entirely with the account of Hugh de Morville given by Dugdale in his *Baronage*. From both it appears, that the husband of Heloise, or Helvisia de Stuteville, was one of the murderers of Becket. And there is no evidence of there having been any other Hugh de Morville. This gentleman was forester of Cumberland, and baron of Burgh upon Sands in that county. It appears that he was dead in or before the sixth year of king John; for in that year Ada and Joan, his daughters and co-heirs, divided his lands. There is nothing improbable in the length of his life: for supposing him thirty or thirty-five years old at the time when he murdered Becket, from that to the sixth of king John are but thirty-four years. But with regard to William de Tracy, another of Becket's murderers, there is certainly an error in the evidences given by Dugdale. He tells us, that this baron had the title of steward or justiciary of Normandy in the nineteenth of Henry the second, but held it not much more than two years longer; Richard, bishop of Winchester, being then substituted in that office. For which he quotes Jorval (commonly called Brompton's Chronicle) where indeed the name of William de Tracy, with the title of *Seneschallus*, is put among the witnesses to the charter of agreement between king Henry the second, and William king of Scotland, concluded at Falaise. But in Mr. Rymer's more authentic edition of that charter it is William de Curcy, *Willielmo de Curcy senescallo*. Dugdale has likewise confounded the assassin of Becket with his grandson by a daughter married to Sir Gervase de Courtenai, which grandson, named William, took the surname of Tracy, and served in an expedition against the Welsh in the year 1222, the

See Brompton's Chron. p. 1105, 1116.

See Rymer, t. i. p. 40.

1222, the seventh of Henry the third ; whereas it appears from two Rolls which are cited by Mr. Madox in his History of the Exchequer, and in his Baronia, that the William de Tracy who slew Becket was dead in the first year of king John. The records are in these words, "*Willielmus de Pyreu dat D. regi mille cc. libras Andegaven- ses pro habendâ integre terrâ Willielmi de Tracy, sicut idem Willielmus eam habuit die quâ obiit. Ita quod stabit ad rectum, si quis inde adversus eum loqui voluerit.*" (History of the Exchequer, p. 362, note n, Oblata Norm. 2 Joh. m. 4) "*Oliverus Traci debet m. Marcas pro habendâ baroniâ Willielmi de Traci, quæ valet in Anglia c. l. Sterling, et in Normannia cc. l. Andegav. salvo jure et clamo cujuslibet in ea. Sed non debent requiri à prædicto Olivero, quia terras illas non habet, et pro quibus Henricus de Traci finem fecit sicut infra continetur.*" (Madox Baronia, p. 67, note, col. 2. Magn. Rot. 1 Joh. Rot. 14, 6. Tjt. Devenescia.) These records prove undeniably, that the William de Tracy who served in the reign of Henry the third, was not the same who lived under Henry the second ; but he does not inform us exactly at what time the latter died. Yet it seems pretty evident that he had not been dead very long before the first of king John, when his succession was thus disposed of in England and Normandy, with a saving to the rights of other claimants. In Kisdon's Survey of Devon, it is said, that he spent the latter part of his life at Wollacomb, in the parish of Mortbay, in Devonshire, a *very retired place*, and lieth buried in an isle of that church, built by himself, under an erected monument, with his portraiture engraven on a grey marble stone, &c.

Amongst the records of the church of Canterbury, there is an original deed, by which it appears, that a William de Tracy gave the manor of Doccumb, in Devonshire, to the chapter of Canterbury, for the salvation of his own soul, and the souls of his predecessors, *and for the love of St. Thomas, archbishop and martyr of venerable memory.* But whether this was the grandfather or the grandson, I find no proof. I rather suppose it was the latter. Probably one or two of the assassins of Becket might die in the Holy Land, or on the way thither ; and the others, who returned, lived retired for many years, which might occasion a false report of their death.

P. 112. *The ambassadors tell the king, that they could draw from Louis no answer to the salutation delivered by them in his name, &c.*

We are told by W. of Newbury, a contemporary historian, that when Henry discovered his son's flight to Louis, he sent to that monarch some persons of great dignity (*viros bonoratos*) to demand the prince back, in virtue of his paternal authority; but at the same time to promise, that if any thing, with regard to him, seemed to want amendment, he would speedily amend it by the advice of Louis. Whereupon Louis asked them, "Who sent them with that message?" They answered, "The king of England." But he replied, "That is false: for the king of England is here, and sends no messages by you. But if you continue to give this title to his father, who was once king of England, that king (I would have you to know) exists no longer: and his persisting to act in that character, after having publicly resigned the kingdom to his son, is a fault that must be speedily corrected." It is not very probable, that Louis should speak of Henry's crowning his son, as *publicly resigning his kingdom to that prince*; since he could not but know, from the usual practice in France, that such coronations imported no such thing, but were meant as a security to the succession. And nothing is said of this answer in the letter to Henry from those whom he sent to that king. If Louis did speak these words, he must have alluded to those that were said to have been spoken by Henry when he ministered to his son at the coronation feast: but those, as well as the action which they accompanied, were extravagant compliments, on which no stress could reasonably be laid.

P. 113. *He said, that Henry had frequently, on very slight pretences, violated the faith which they had mutually pledged the one to the other, &c.*

By this he probably meant the promises Henry had made to go with him to the Holy War; for of any other breach of faith in Henry towards him, I find no trace, and for that he had good excuses.

P. 114. *Before this letter came to him, or about the same time, Richard and Geoffry were sent by their mother to Paris.*

William

V. Neubri-
genf. l. ii.
c. 27.

V. Benedic-
t. Abb. et
Brompton,
ad ann.
1173.

William of Newbury says, that they went thither in company with their elder brother, who came secretly into Aquitaine, and drew them away from thence with their mother's consent: but it is more probable, that (as other historians relate) he continued with Louis, and she sent them to join him.

P. 119. *Peter of Blois therefore wrote according to his own principles of religion and government, or accommodated his style to the wishes and pretensions of the court of Rome; &c.*

See his
works, vol.
v. p. 727.

This was the opinion of the most sagacious Dr. Stillingfleet. In his answer to Mr. Cressy's Epistle Apologetical he says of Petrus Blesensis, "We must consider that he was always a secret friend of Becket and his cause in the whole quarrel, and being employed by the king in his straits to write to the Pope to excommunicate his son, he, knowing very well the prevalent arguments in the court of Rome, might strain a compliment in the behalf of his master to the Pope, for which he had little cause to thank him; although, it may be, Petrus Blesensis express his own mind, whether it were the king's or no."

V. l. i. c. 7.
Radivici
Frisu. Ap-
pend. ad Ot-
tonem De
Reb. Gest.
Fred. I.
Imp.

I cannot but think this a much better method of accounting for the difficulty, than that forced one which Mr. Carte has laboured to give in his history of this reign. There is a passage in a letter of king Henry the second to the emperor Frederick Barbarossa, which is preserved in the history of that prince's life by Radivici Frisingensis, from whence a zealous assertor of the Imperial prerogatives might draw as good a proof that Henry the second had subjected to Frederick Barbarossa and the empire his kingdom of England and all his foreign dominions, as Baronius and Bellarmine have drawn from the other, to prove the subjection of England to the Pope. The words are these: "*Regnum nostrum, et quicquid ubique nostra subijcitur ditioni, vobis exponimus et vestra committimus potestati, ut ad vestrum nutum omnia disponantur et in omnibus vestri fiat voluntas Imperii.*" Yet, strong as these expressions are, they really meant nothing more than a high compliment to the Emperor in return for one made by him; as will appear by the whole letter, which the reader may see transcribed in the Appendix to this book. And Radivici observes in another part of his history (l. ii. c. 76.) that

c. 76.) that the same hyperbolical style was used in writing to this prince by all the kings in Europe, notwithstanding the constant jealousy they had of his power. "*Reges Hispaniæ, Angliæ, Franciæ, Daciæ, Boemiæ, atque Ungariæ, quævis suspectam semper ejus habuerunt potentiam, sibi adeo per amicitiam et societatem devinxit, ea ad suam voluntatem sic inclinatos habuit, ut quoties ad eum litteras vel legatos miserint, sibi cedere auctoritatem imperantibus, illis non deesse voluntatem obsequendi denuncient*" Yet this too, I presume, proceeded rather from the secretaries, who wrote the letters, than from the princes themselves; the eloquence of that age being turgid, and the monks, whose pens were employed in these affairs, straining the compliments they were ordered by their masters to make beyond the bounds of propriety, and without a due regard to the dignity of those in whose names they wrote. That the Pope and the Emperor had a pre-eminence of rank and dignity, the one as spiritual, and the other as temporal, chief of that system, in which the whole western world of the Roman communion was considered as one body, all the princes acknowledged: but this implied no subjection.

P. 135. *Of the few that were saved alive, &c.*

SOME writers of that age make the number of Flemings slain in this battle ten thousand. If this be true, the heavy-armed infantry, called by William of Newbury *pedites fortes*, must have been fewer in number than the archers and light horse, whom that author does not mention.

P. 136. *After the rout of the Flemings, Henry's forces, by which that victory was obtained, went into winter quarters; the late season not permitting them to undertake the siege of Framlingham Castle.*

DICATO, and after him Matthew Paris, relates, that the generals of the king's army, by an agreement with Hugh Bigot corruptly made on their part, permitted a body of fourteen thousand Flemings, who at this time were pent up in Framlingham Castle, where, by reason of their multitude, they must necessarily have perished for want of food if the place had been closely blockaded, to go out of that fortress, and return into Flanders, giving them a safe conduct as far as Dover, and providing ships in that port to carry them over. But how all these Flemings came

came to be in the castle, does by no means appear. That any were left there when the earl of Leicester marched out, is not said by any writer who lived in those times; and Diceto tells us himself, the army under that earl was almost entirely destroyed or taken. Nor can one suppose that Hugh Bigot, who had forced them to go out from the inconvenience or danger of keeping them longer there, would immediately afterwards have admitted another and a greater army of their countrymen into his castle. It is also highly improbable that the constable, Hugh de Bohun, or the earl of Cornwall, the king's uncle, or any of the nobles who had served him so well against the earl of Leicester, should be gained by bribes to do any thing contrary to his service. It seems therefore that no credit is due to this story.

P. 140. *The bishop of Lincoln, informed of the retreat of the Scots, built a castle at Topcliff, &c.*

These castles, which were so soon run up, were probably built of wood, protected by the steep hills on which they were situated, and by a circle of walls, or sometimes two, with deep ditches and ramparts, which were made of the earth dug out of the ditches. There were others of which the chief defence was the water with which they were inclosed, being placed in low grounds, which had running streams in abundance; and these were called *Motæ*, from whence we derive the word Moats.

P. 165. *Henry did not pursue them; the forces he had with him there, though sufficient to secure his principal object, the defence of the town, not being able to force so superior an army in the open field.*

Some ancient writers say, that, to secure his retreat, Louis treated with Henry; and having promised, upon oath, to confer with him, the next day, for settling the conditions of a general peace, obtained from him thereby a suspension of hostilities, which he used to draw off his army unmolested, and then broke his faith, by not keeping the appointment he had solemnly made. But it does not appear that such a fraud could be necessary for him; the confederates being so superior to Henry in the number of their forces, and especially of their cavalry, that, as they retired in good order, it would not have been prudent for him to attack them, at the hazard of a battle.

William

William of Newbury, one of the best historians of those times, says nothing of this treaty; nor is it mentioned by Diceto, another contemporary writer, who speaks particularly of other less important occurrences in the siege of Rouen, and with great blame of Louis for a supposed breach of faith in the affair of Verneuil.

P. 179. *And for some time afterwards, dined together, every day, at the same table, and lay, every night, in the same bed.*

From hence it should seem, that, for some reason not explained, young Henry's queen was not yet restored to her husband. Probably she had been confined in the Tower of London, and it was not thought proper to discharge her from thence till the two kings met the parliament assembled at Westminster eleven days after their landing.

P. 185. *He was attended by the king of Scotland, who brought thither with him all the bishops, and freeholders of his realm, from the greatest to the least, &c.*

These are the words of Benedictus Abbas, "*Et habuit sibi obviam Willielmum Regem Scotiæ, qui secum adduxerat omnes episcopos, et comites, et barones, et francos tenentes terræ suæ a maximo usque ad minimum, &c.*"

It must be observed, that the freeholders in Scotland at this time were much fewer in proportion to the number of the people, than the freeholders in England; the Scotch having no tenants in free socage.

P. 191, 192. *For he took from Hugh de Lacy the government of that kingdom, &c.*

I presume that Hugh de Lacy or Lasci, after the siege of Verneuil, which city he had defended, returned into Ireland, about the middle of August, and executed the functions of chief governor there till the earl of Pembroke was sent, about the end of autumn, to take that post. The fragment ascribed to Maurice Regan expressly says, that the city of Dublin was by Lacy rendered to that earl, and that Lacy then retired with all his followers into Meath to inhabit the same. This name is sometimes written Lacey in old authors, but the charters have it Laci or Lacy.

V. Benedict.
Abb. t. i.
P. 56.

V. Harrie's
Hibernica,
P. 18.

P. 221. The monk who relates this represents it as *boasting* the *impiety* of the king; but it only seems that the *ridiculous* the *superstitious* method of trying a criminal *attestation* was *fraudulently* managed; and so, doubtless, it was; or no man could ever have been acquitted by it.

It is a strange notion of the President Montesquieu in his *Esprit des Loix*, that, in a people accustomed to the use of arms, the skin would become too hard and callous to receive impression enough from the hot iron or boiling water, to have it appear three days afterwards; or that, if it did appear, it was a mark that he who underwent this proof was an effeminate man! His words are, “*Qui*

Esprit des
Loix, l.
xxvii. c. 17.

“*ne voit que chez un peuple exercé à manier les armes, la peau rude et calluse ne devoit pas recevoir assez l'impression du fer chaud, ou de l'eau bouillante, pour qu'il y parut trois jours après? Et s'il y paroissoit, c'étoit une marque que celui qui faisoit l'épreuve étoit un efféminé.*” He adds, that the French peasants handle hot iron at pleasure with their callous hands; and that the hands of women who work hard could likewise resist the heat thereof. *Nos paysans avec leurs mains calluses manient le fer chaud comme ils veulent; et quant aux femmes, les mains de celles qui travailloient pouvoient résister au fer chaud.*

Essais Historiques
sur
Paris, t. i.
p. 195.

Another French writer very justly expresses his surprise at the President's thinking, that their ancestors had hands like the paws of a crocodile; and asks, in what province of France the peasants plunged their hands and wrists in boiling water without its leaving any mark? But he shews by the instance of the common fire-eaters, that there were artificers by which the impression of the fire might be resisted.

L. xxviii.
c. 17.

The President has another extraordinary passage in that part of his book where he treats of judicial combats or duels. He says, this kind of proof had some reason founded on experience; for, in a nation wholly warlike, cowardice implies many other vices, particularly the want of a due sense of honour; notwithstanding all the force of education and example; and usually in such a nation persons well born, who have that sense as they ought, will not be deficient in force or skill, because they will exercise themselves all their lives in such things as are necessary for the obtaining of honour. “*La preuve par le combat singulier avoit quelque raison fondée sur l'expérience.*” Dans

“ Dans une nation uniquement guerrière la poltronerie sup-
 “ pose d’autres vices ; elle prouve qu’on a résisté à l’éduca-
 “ tion qu’on a reçue, et que l’on n’a pas été sensible à
 “ l’honneur, ni conduit par les principes qui ont gouverné
 “ les autres hommes ; elle fait voir qu’on ne craint pas leur
 “ mépris, et qu’on ne fait point de cas de leur estime ; pour
 “ peu qu’on soit bien né, on n’y manquera pas ordinairement
 “ de l’adresse qui doit s’allier avec la force, ni de la force
 “ qui doit concourir avec le courage, parce que faisant cas
 “ de l’honneur on se sera toute sa vie exercé à des choses
 “ sans lesquelles on ne peut l’obtenir.” But, surely, how-
 ever warlike a nation might be, and however trained to
 arms, there would be a great difference between the
 strength and the skill of different men, and it could not
 be certain that the advantage would be on the side of that
 combatant whose cause was the justest. Nor did it follow,
 that a man was either a coward, or insensible to honour,
 because he was slain in a duel. How then could experi-
 ence shew, that there was any reason in this method of
 tryal ?

The same writer observes, that gentlemen fought L. xvii. c. 20.
 against each other on horse-back, and with their arms,
 but villeins on foot, and with sticks ; from whence it
 followed, that the stick was the instrument of outrage,
 because a man beaten with it had been treated like a villain :
 “ Les gentilshommes se battoient entr’eux à cheval et avec
 “ leurs armes, et les vilains se battoient à pied et avec le
 “ bâton. De là il suivit que le bâton étoit l’instrument des
 “ outrages, parce qu’un homme qui en avoit été battu, avoit
 “ été traité comme un vilain.” But, according to this
 reasoning, the striking with a stick would have dishonoured
 a gentleman as much as being struck, because it was using
 the weapon of a villain ; and if a gentleman had received
 any number of blows with the flat of a sword, or with
 any other weapon which gentlemen used, it would not have
 been considered as any disgrace ! Such conceits are the
 blemishes of Montesquieu’s book, which in many respects
 deserves the highest praise ; but he had the fault from
 which writers with warm imaginations and great subtilty
 of wit are seldom quite free, an excessive desire of saying
 something new upon every subject, and differing from the
 common opinions of mankind.

P. 221. *And the same modes of trial were customary, long before, in many heathen nations, particularly among the Celtic tribes, who in their early migrations out of the east, brought with them these superstitions, and spread them over the greatest part of Europe.*

See Pelloutier
Histoires des
Celts, t. ii.
p. 10.

The Celts believed that intelligences resided in water and fire, which had the power of distinguishing the innocent from the guilty. The Germans tried by water the legitimacy of their children.

Et quos nascentes explorat gurgite Rhenus.

Claudius in Rufini. l. ii.

Thucydides,
l. i. c. 3.

The Greeks, who drew many customs from the antient Pelasgi, the first inhabitants of their country, were not unacquainted with trials by hot iron; for mention is made of that ordeal in the Antigone of Sophocles. Mons. Pelloutier has proved that the Pelasgi were Celts. Heliodorus, in his *Æthiopicks*, a book full of antient learning, particularly with regard to religion, makes Chariclea, a priestess of Apollo at Delphi, prove her virginity by walking on burning plough-shares without harm. Strabo mentions a temple under Mount Soraete, near which there was a grove, dedicated to the Nymph Feronia, where men walked unhurt over heaps of burning coals. The priests of this temple had the secret of preventing the action of the fire on the naked feet: and this was a remnant of the antient Celtic religion, established in Italy before the Greek colonies had fixed themselves there. The Roman religion was a mixture of the Celtick and Grecian. I will end this note by observing, that even in our days the vulgar have tried witches by throwing them into water; a traditional ordeal derived from our Celtick forefathers!

T. i. c. 9.
Strabo, l. v.
226.

See also Plin.
H. N. vii. 2.

P. 222. *This was also a part of the antient jurisprudence of many heathen nations, &c.*

Apud Sto-
bæum, l.
lviii.

Nicolaus Damascenus tells us, that the Umbrians, a Celtick people, decided all controversies among themselves by combats: "*Umbrici, quum controversias inter se habent, pugnant armati, ac si bello congregiendum esset, et videntur justiore habuisse causam qui adversarium interimerent.*" Valerius Paterculus says, that the Germans thanked Varus, for determining by law those disputes

putes which used to be determined among them by arms.

"*Gratias agere. Vero quod solita armis discerni jure termi-* L. ii. c. 22.
narentur." Ovid says of the Getae,

Nec metuunt leges, sed cedit viribus æquum,

Visaque pugnaci jura sub ense jacent.

And in another place,

Adde quod injustum rigido jus dicitur ense.

To what is said in this history of trials by duel I will add here, that I find, in the Exchequer accounts, sums allowed for the maintenance, armour, and apparel, of certain persons there called *probatores regii*, employed to convict offenders by duel. See Madox, Hist. of the Exchequer, c. x. p. 255, 256.

P. 232. *The Town of Preston was amerced five marks for having put a man to the water ordeal without warrant, &c.*

I also find in the History of the Exchequer a fine of twenty marks which Gospatrick of Newcastle owed to King Henry the Second, for a permission to clear himself by oath, instead of the hot iron, concerning some crime not named in the record; and another of sixty marks, which Robert the son of Brien paid, to be freed from that ordeal, on some accusation not express. These indulgences should either have been granted to all, or sold to none.

P. 246. *I presume they were such as arose from accusations, not made by appeal, but by indictment on the ground of public fame, which are mentioned by Bracton as usual in his time.*

It must be observed, that Bracton takes care to distinguish the public fame which was a ground for indictments, from mere common report. He says it ought to be such as takes its rise from good and grave men, who are worthy of credit, not from the malicious or slanderous; and adds, that popular clamour is often caused by what has no foundation in truth, for which reason the vain discourses of the people are not to be regarded. "*Et sciendum quod fama, quæ suspicionem inducit, oriri debet apud bonos et graves, non quidem a malevolis et maledicis, sed providis et fide dignis personis.*" V. Bracton, l. iii. c. 22.

VOL. IV.

Y

"*Tumul-*

NOTES TO THE FOURTH BOOK, &c.

“ Tumultus enim fit et clamor populi, quandoque de pluribus quæ in veritate non fundantur, et ideo vanæ voces populi non sunt audiendæ.”

*The END of the NOTES to the FOURTH BOOK of the
LIFE of KING HENRY the SECOND.*

APPENDIX

APPENDIX

TO THE

FOURTH BOOK

OF THE

Life of King Henry the Second.

No. I.

This refers
to vol. iii.
p. 44.

Rymeri Fœdera, Tom. I. p. 15.

ADRIANUS Episcopus, servus servorum Dei, carissimo in Christo filio illustri Anglorum Regi, salutem, et Apostolicam Benedictionem. Laudabiliter satis et fructuose de glorioso nomine propagando in terris æternæ felicitatis præmio cumulando in cœlis, tua magnificentia cogitat; dum ad dilatandos Ecclesiæ terminos, ad declarandum indoctis et rudibus populis Christianæ fidei veritatem, et vitiorum plantaria de agro Dominico extirpanda, sicut Catholicus Princeps intendis, et ad id convenientius exequendum consilium Apostolicæ sedis exigis et favorem. In quo facto, quanto altiori consilio, et majori directione procedes, tanto in eo feliciorum progressum te, præstante Domino, confidimus habiturum, eo quod ad bonum exitum semper et finem soleant attingere quæ de ardore fidei et religionis amore principium acceperunt.

A. D. 1154.
An. 2. H. II.

Sane Hiberniam et omnes Insulas quibus sol justitiæ Christus illuxit, et quæ documenta Fidei Christianæ receperunt, ad jus beati Petri et sacrosanctæ Romanæ Ecclesiæ (quod tua etiam nobilitas recognoscit) non est dubium pertinere; unde tanto in eis libentius plantationem fidei fide-

lem et germen Deo gratiam inferimus, quanto id a nobis interno examine districtius prospicimus exigendum.

Significasti siquidem nobis, fili in Christo carissime, et Hiberniæ Insulam, ad subdendum illum populum legibus, et vitiorum plantaria inde extirpanda velle intrare, et de singulis domibus annuam unius denarii beato Petro velle solvere pensionem, et jura Ecclesiarum illius terræ illibata et integra conservare. Nos itaque, pium et laudabile desiderium tuum favore congruo prosequentes, et petitioni tuæ benignum impendentes assensum, gratum et acceptum habemus, ut, pro dilatandis Ecclesiæ terminis, pro vitiorum restringendo decursu, pro corrigendis moribus et virtutibus inferendis, pro Christianæ Religionis augmento, Insulam illam ingrediaris; et quæ ad honorem Dei et salutem illius spectaverint exequaris; et illius terræ populus honorifice te recipiat, et sicut dominum veneretur, jure nimirum Ecclesiarum illibato et integro permanente, et salva beato Petro, et sacrosantiæ Romanæ Ecclesiæ de singulis domibus annua unius denarii pensione.

Si ergo, quod concupisti animo, effectu duxeris prosequente complendum, stude gentem illam bonis moribus informare, et agas, tam per te, quam per illos quos ad hoc fide, verbo, et vita idoneos esse perspexeris, ut decoretur ibi Ecclesia, plantetur, et crescat fidei Christianæ Religio, et quæ ad honorem Dei et salutem pertinent animarum taliter ordinentur, ut et a Deo sempiternæ mercedis cumulum consequi merearis, et in terris gloriosum nomen valeas in sæculis obtinere.

N. B. Some manifest errors in this charter, as given by Rymer, who does not say that he published it from any original Record, are corrected from the copy given by Giraldus Cambrensis in his *Hibernia Expugnata*, l. ii. c. 6. in Camden's *Anglica, Normannica, &c.* and also in his *Book de Rebus a se gestis*, par. ii. c. 22. in *Anglia Sacra*, par. ii.

No. II.

This refers
to vol. iii.
p. 94.

Ware, Hibern. Antiq. p. 235.

HENRICUS, Dei gratia, Rex Angliæ, et Dux Nor-
manniæ et Aquitaniæ, et Comes Andegaviæ, Ar-
chiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus,
Justitiariis, et omnibus Ministris et fidelibus suis, Francis,
Anglis et Hiberniensibus totius terræ suæ, Salutem. Sci-
atis me dedisse et concessisse, et præfenti charta mea confir-
masse Hugoni de Laay, pro servitio suo, terram de Mîdia,
cum omnibus pertinentiis suis, per servitium quinquaginta
Militum, sibi et hæredibus suis, tenendam et habendam
de me et hæredibus meis, sicut Murchardus Hn. Melachlin
eam tenuit, vel aliquis alius ante illum, vel postea. Et
de incremento dono illi omnia feoda, quæ præbuit vel
præbebit circa Duveliniam, dum Balivus meus est, ad
faciendum mihi servitium, apud Civitatem meam Duvelin-
niæ. Quare volo et firmiter præcipio, ut ipse Hugo et
hæredes sui post eum, prædictam terram habeant, et
teneant omnes libertates, et liberas consuetudines quas
ibi habeo, vel habere possum, per prænominatum servi-
tium, a me et hæredibus meis, bene et in pace, libere,
et quiete, et honorifice, in bosco et plano, in pratis et
pascuis, in aquis et molendinis, in vivariis et stagnis, et
piscationibus et venationibus, in viis et seminis, et portu-
bus maris, et in omnibus aliis locis et aliis rebus ad eam
pertinentibus, cum omnibus libertatibus, quas ibi habeo,
vel illi dare possum, et hac mea charta confirmare.
Teste Comité Richardo filio Gilberti, Willielmo de Bra-
osa, &c. Apud Weisford.

No. III.

This refers
to vol. iii.
p. 98.

No. III.

*Epistola 89. L. v. E Codice Vaticano, Edit. Brus-
sels, corrected by the Manuscript in the Cotton
Library.*

Regi Angliæ Albertus et Theodebertus Cardinales.

NE in dubium veniet quæ geruntur, et usus habet, et communis consideratio utilitatis exponit, ut scripturæ serie debeant annotari. Inde siquidem est, quod nos mandatum illud in scriptum duximus redigendum, quod vobis pro eo fecimus, quia malefactores illos, qui S. memoriæ T. quondam Cant. Arch. occiderunt, occasione motus et turbationis, quam viderunt in vobis, ad illud facinus processisse timetis. Super quo tamen facto purificationem in nostra præsentia de voluntate propria præstitistis, quod videlicet nec præcepistis, nec voluistis ut occideretur, et quando pervenit ad vos plurimum doluistis. Ab instanti siquidem Festo Pentecostes usque ad annum tantam pecuniam dabit, unde ad arbitrium Fratrum Templi ducenti milites valeant ad Defensionem Hieros. terræ spatio unius anni teneri. Vos autem a sequenti Domini Nativ. usque ad triennium terminum, Crucem accipietis, proxima tunc æstate illuc in propria persona profecturi, nisi remanserit per D. Papam, vel Cathol. successorem ejus. Sane si contra Saracenos in Hispaniam pro urgente necessitate profecti fueritis, quantum temporis fuerit ex quo arripueritis iter, tantumdem supradictum spatium Hieros. Profactionis poteritis prolongare. Appellationes nec impedietis, nec permittetis impediri, quin libere fiant in ecclesiasticis causis ad R. Eccl. bona fide, et absque fraude, et malo ingenio, ut per R. Pont. causæ tractentur, et suum consequantur effectum. Sic tamen, ut si vobis suspecti fuerint aliqui securitatem facient, quod malum vestrum vel Regni vestri non quærent. Consuetudines quæ inducæ sunt contra Ecclesias terræ vestræ tempore vestro penitus demittetis, nec ab episcopis amplius exigitis. Possessiones Cantuariensis Ecclesiæ, si quæ ablatæ sunt, plane restituetis, sicut habuit uno anno antequam Archiep. de Ang. egrederetur. Clericis præterea et Laicis utriusque sexus

pacem

pacem vestram, et gratiam, et possessiones suas restituetis, qui occasione prænominat. Arch. destituti fuerint. Hæc autem vobis, autoritate D. Papæ, in remissionem omnium peccatorum vestrorum injungimus et præcipimus observare, bona fide, absque fraude, et malo ingenio.

Juravit hoc Rex, juravit et de Consuetudinibus novis demittendis Filius ejus. Et juraverunt ambo quod a vobis et successoribus vestris non recederent, quamdiu eos sicut Christianos Reges vel Catholicos habueritis.

In that which is called Epist. 88. but is really only an Extract from Alanus, in Hist. Quadripartita, there is this Clause :

Secundo quod prava Statuta de Clarenduna, et omnes malas Consuetudines, quæ in diebus suis in Ecclesiis Dei inducæ sunt, penitus dimitteret. *Si quæ autem malæ fuerunt ante tempora sua, illas juxta mandatum D. Papæ, et consilio religiosorum virorum temperabit.* But this is of no authority against the A& or Instrument of the Reconciliation, drawn up by the Cardinals who made it, and the testimony of the King himself in his Letter to the Clergy of England.

No. IV.

This and the next refer to vol. iii. p. 112.

Petrus Blesensis, Epist. cliv. cliii. p. 281, &c.

Reginæ Anglorum Rothomagensis Archiepiscopus, et Suffraganei sui, salutem, et quæ ad pacem sunt, quærere.

IN publicam notitiam venit, nec alicui Christiano licitum est ignorare, quam firma et indissolubilis sit copula conjugalis. Matrimonia semel inita separari non posse, sanxit veritas, quæ mentiri non potest. Quos Deus, inquit, conjunxit, homo non separet. Sicut autem divini mandati se transgressorem constituit, qui separat conjugatos, ita culpabilis conjugata est, quæ se a viro suo separat, fidemque socialis vinculi non observat. Cum una caro conjuges efficiantur, necesse est, ut unionem corporum comitetur spirituum unitas et paritas in consensu naturæ con-

conditionem. Apostoli mandatum et Evangelii legem mulier illa evacuat, que viro non est subdita. Caput enim mulieris vir est, de viro sumpta est, viro est uncta, viri subdita potestati. Omnes itaque communi et lamentabili querimonia deploramus, quod, cum sis mulier prudentissima, divertis a viro, recedit latus a latere, membrum capiti non deservit, imo, quod enormius est, viscera Domini Regis et tua pateris insurgere contra Patrem: ut merito cum propheta dicat, Filios enutrivisti et exaltavi: ipsi autem spreverunt me. Utinam, sicut alius propheta commemorat, prævenisset hora novissima dies * vestros, et operuisset terra faciem † vestram, nec videremus hæc mala. Scimus, quia nisi revertaris ad virum tuum, eris generalis ruinæ occasio; et quod singulariter nunc delinquis in commune dispendium converteretur. Revertere itaque, Regina illustris, ad virum tuum, et Dominum nostrum, ut in tua reconciliatione reformetur laborantibus quies, et in tuo reditu lætitia redeat universis. Si te ad hoc non promovent preces nostræ, te saltem afflictio populorum, imminens pressura Ecclesiæ, et desolatio regni sollicitet: aut enim mentitur veritas, nunc omne regnum in se divisum desolabitur. Sane hæc desolatio in Dominum Regem converti non potest, sed in filios ejus, et successores ipsorum. Contra manum fœmineam et consilium puerile provocatis offensam Domini Regis, cui etiam fortissimi reges colla subjiciunt. Ea propter, antequam res in deteriorem exitum vergat, redeas cum filiis ad maritum, cui parere et cohabitare teneris, te converte, nec tibi aut tuis filiis sit suspectus. Certissimi enim sumus, quod omnimodam exhibebit vobis dilectionem, et securitatis plenissimam firmitatem. Mone quæso filios tuos, ut patri suo subditi et devoti existant, pro quibus tot passus est angustias, tot discrimina, tot labores. Unde, ne inconsulta facilitas dilapidet ac disperdat quod tantis est sudoribus acquisitum, hæc tibi, piissima Regina, et zelo Dei dicimus, et sinceræ caritatis affectu: parochiana enim nostra es, sicut et vir tuus. Non possumus deesse iustitiæ. Vel redibis ad virum tuum, vel jure canonico constringemur et tenebimur in te censuram Ecclesiasticam exercere. Quod quidem inviti dicimus, et quod, nisi respue-
ris, cum dolore et lacrymis faciemus. Valete.

* nostros.
† nostram.

Epist.

Epist. cliii.

Henrico Dei Gratia Illustri Regi Anglorum, etc. R. Rotbomag. Archiepiscopus, et Arnolpbus Lexoniensis Archiepiscopus, salutem in eo, per quem reges regnant.

TANTO tempestivius ac diligentius injunctam nobis Legationem duximus prosequendam, quanto periculiosior in tanto discrimine dilatio videbatur. Accincti itaque ad laborem suscepti itineris Regem Francorum adivimus, blandissimæque salutatione præmissa ipsius prævenientes offensam, nulla cautela potuimus vestræ salutationis extorquere responsum. Singulos nostræ Legationis articulos explicavimus seriatim, commoda pacis, et incommoda diffensionis frequentius inculcantes. Ipse vero verbum nostrum in omnibus, sola salutatione excepta, patienter admisit. Expedito itaque diligenter nostræ Legationis excurso, spatio modici temporis interjecto contumeliose cœpit nobis fraude et versutias exprobrare, quibus se conquirebatur sæpissime circumventum. Dicebat, quod fidem inter vos mutuo compromissam frequenter occasione levissima violastis: vosque in omnibus adeo exhibuistis instabilem, quod non adhibebit de cætero vobis fidem. Non sit vobis, Rex illustrissime, onerosum, si quod audivimus loquimur. Hæc est enim nuntiorum conditio, ut de injuncto sibi mandato nil subiceant, nil rescindant, vel diminuant de responso. Addebat etiam, se firmissimum habuisse propositum expugnandi vos, antequam Carnotum filius vester adventasset: istasque occasiones diffensionis et odii proponebat, quod filiam suam ad virum suum redire non finitis, quod ei dotem ejus non redditis, quod subditos suæ ditioni populos a montibus Alvernæ usque ad Rhodanum in ipsius odium concitastis, quod in coronæ suæ dispendium Comitem S. Egidii in ligum hominem recepistis: tandem etiam juramento firmavit, se nunquam de cætero vobiscum fœdus, aut concordiam habiturum, nisi de vestræ uxoris et filiorum vestrorum assensu. Nunc igitur in custodiendis munitionibus vestris, et potissime in corporis vestri tutela consilio est utendum. Communi enim voto in exitium vestrum tota Francia conspiravit. Nec satis est ei exterminare terræ
faciem

faciem igne et gladio; sed in vestram personam (quod ab-
sit) scelus execrabile machinatur. Consulimus sane, si
qua abstulisti, si læsisti aliquem, ablata restituere, et odia
reformare in gratiam. Hoc enim inimicos vestros potis-
sime invitat ad pugnam, quod intestinos hostes sentiunt
vos habere: et qui vobiscum dulces capiunt cibos data
opportunitate magnificabunt super vos supplantationem.
Maledictus qui confidit in homine, et ponit carnem forti-
tudinem brachii sui. Quid est amabilius filiis? quid uxore
familiarius? recessit tamen uxor a latere vestro, et filii
insurgunt in patrem, ideo non frustatorie loquebatur hic
ille hominum prudentissimus, qui dicebat, Amico ne cre-
das: ab ea quæ dormit in sinu tuo, custodi claustra oris
tui. Filius enim contumeliam facit patri: et inimici ho-
minis domestici ejus. Sane suffragia illius imploranda
censemus, in cujus manu sunt corda Regum. In ejus
nomine parvitati David Golizæ subjacuit magnitudo. In ejus
nomine Samaria adeo fame confecta obsidente Benadab,
quod triginta argenteis caput asini vendebatur, sub ictu
oculi liberata est, exuberantique victualium affluentia re-
dundavit: in eo siquidem sperans non infirmabitur. Si
exurgat adversus vos prælium, in hoc sperate. Si exur-
gant adversus vos castra, non timebit cor vestrum: ipse
enim docebit manus vestras ad prælium. Accipite vobis
in auxilium preces Ecclesiæ: quam, si in aliquo offendis-
tis, debita satisfactione impenfa ei de cætero omnem re-
verentiam exhibete. Sponsa enim CHRISTI est; et in-
jurias sponsæ CHRISTUS reputat suas, nec est, quod ma-
gis hostes vestros incitat ad conflictum, quam quod arbi-
trantur vos Ecclesiæ DEI minus extitisse devotum. Bene
valeat carissimus Dominus noster, & de his qui se contra
eum in superbia & abusione erigunt reportet in virtute
Altissimi gloriam & triumphum.

No. V.

This and the
next refer to
vol. iii.
p. 118.

Petrus Blefensis, Epist. cxxxvi. p. 245, &c.

*Sanctissimo Domino suo Alexandro, Dei Gratia, Catholicæ
Ecclesiæ summo Pontifici, H. Rex Angliæ, Dux Nor-
manniæ & Aquitaniæ, Comes Andegaven. & Cenoman.
salutem & devotæ subjectionis obsequium.*

IN magnorum discriminum angustiis, ubi domestica consilia remedium non inveniunt, eorum suffragia implorantur, quorum prudentiam in altioribus negotiis experientia diuturnior approbavit. Longè lateque divulgata est filiorum meorum malitia, quos ita in exitium patris spiritus iniquitatis armavit, ut gloriam reputent & triumphum patrem persequi, & filiales affectus in omnibus diffiteri, præveniente meorum exigentia delictorum. Ubi plenior voluptatem contulerat mihi Dominus, ibi gravius me flagellat: &, quod sine lacrymis non dico, contra sanguinem meum & viscera mea cogor odium mortale concipere, & extraneos mihi quærere successores. Illud præterea sub silentio præterire non possum, quod amici mei recesserunt à me, & domestici mei quærunt animam meam. Sic enim familiarium meorum animos intoxicavit clandestina conjuratio, ut observantiæ proditoriæ conspirationis universa posthabeant. Malunt namque meis adhærere filiis contra me transfugæ & mendici, quàm regnare mecum, & in amplissimis dignitatibus præfulgere. Quoniam ergo vos extulit Deus in eminentiam officii Pastoralis ad dandam scientiam salutis plebi ejus, licet absens corpore, præsens tamen animo, me vestris advolvo genibus, consilium salutare deposcens. *Vestræ jurisdictionis est regnum Angliæ, & quantum ad feuditarii juris obligationem, vobis duntaxat obnoxius teneor, & astringor.* Experiatur Angliæ, quid possit Romanus pontifex, & quia materialibus armis non utitur, *patrimonium B. Petri* spirituali gladio tueatur. Contumeliam filiorum poteram armis rebellibus propulsare, sed patrem non possum exuere: nam &, Jeremia testante, nudaverunt lamix mammas suas, laceraverunt catulos suos. Et licet errata eorum quasi mentis efferatæ me fecerint, retineo paternos affectus, & quan-

dam violentiam diligendi eos mihi conditio naturalis importat. Utinam faperent, & intelligerent. ac novissima providerent. Lactant filios meos domestici hostes, & occasione malignandi habita non desistunt, quousque redigatur virtus eorum in pulverem, & converso capite in caudam servi eorum dominantur eis, juxta verbum illud Salomonis, Servus astutus filio dominabitur imprudenti. Excitet ergo prudentiam vestram spiritus consilii, & convertatis corda filiorum ad patrem. Cor enim patris pro beneplacito vestro convertetur ad filios, & in fide illius, per quem reges regnant, vestrae magnitudini promitto, medietati vestrae in omnibus paritum. Vos Ecclesiae suae, pater sancte, diu CHRISTUS servet incolumem.

*Radv. Frisingens. App. ad Ottonem de Rebus gestis
Fred. I. Imp. l. i. p. 263.*

IBIDEM tunc affuere etiam Henrici regis Angliae missi, varia & preciosa donaria multo lepore verborum adornata praesentantes. Inter quae papilionem unum quantitate maximum, qualitate bonissimum, perspeximus. Cujus si quantitatem requiris, non nisi machinis, & instrumentorum genere, & adminiculo levare poterat: si qualitatem, nec materia, nec opere ipsum putem aliquando ab aliquo hujusce apparatu superatum iri. Literas quoque mellito sermone plenas pariter direxerat. Quarum hic tenor fuit: *Præcordiali amico suo Friderico, Dei gratia, Romanorum Imperatori invictissimo, Henricus rex Angliae, dux Normanniae & Aquitaniae, & comes Andegavenfis, Salutem & veræ dilectionis concordiam.* Excellentiae vestrae quantas possumus referimus grates, dominantium optime, quod nos nunciis vestris visitare, salutare literis, muneribus praevenire, & quod his charius amplectimur, pacis & amoris invicem dignati estis foedera inchoare. Exultavimus & quodammodo animum nobis crescere, & in majus sensimus evehi, dum vestra promissio, in qua nobis spem dedistis in disponendis regni nostri negotiis, alacriores nos reddidit, & promptiores. Exultavimus, inquam, & tota mente magnificentiae vestrae assurreximus, id vobis in sincero cordis affectu respondentes, quod quicquid ad honorem vestrum spectare noverimus, pro posse nostro effectui mancipare parati sumus. *Regnum nostrum, & quicquid
ubique*

*ubique nostræ subjicitur ditioni, vobis exponimus, & vestræ committimus potestati, ut ad vestrum nūtum omnia disponantur, & in omnibus vestri sūt voluntas imperii. Sit igitur inter nos & populos nostros dilectionis & pacis unitas indivisa, commercia tuta: ita tamen ut vobis, qui dignitate præminetis, imperandi cedat auctoritas, nobis non deerit voluntas obsequendi. Et sicut vestræ serenitatis memoriam vestrorum excitat in nobis munerum largitio, sic vos nostri quoque reminisci præoptamus, mittentes quæ pulchriora penes nos erant, & vobis magis placitura. Attendite itaque dantis affectum, non data, & eo animo quo datur excipite. De * manu beati Jacobi, super quâ nobis scripsistis, in ore magistri Heriberti & Guilhelmi clerici nostri verbum posuimus, teste Thoma Cancellario apud Nor-*

No. VI.

This refers
to vol. iii.
p. 170.

Rymeri Fœdera, Tom. I. p. 37.

Hæc est concordia quæ facta est inter Regem & Filios suos.

1. **N**OTUM sit omnibus tam præsentibus quam futuris, quod pax inter Dominum H. Regem Angliæ & filios ejus, Henricum videlicet Regem, & Ricardum, & Gaufridum, in hunc modum, Deo volente, reformata est.

A. D. 1174.
A. 20 H. II.
Ex Orig. in
Biblioth.
Cotton.

2. Henricus Rex, & fratres sui prædicti, ad patrem suum & servitium ejus, sicut ad dominum suum, redierunt liberi & absoluti ab omni juramento & inprisa, quam inter se, vel cum aliis, fecerant contra eum & homines suos.

3. Et omnes barones & homines, qui a fidelitate patris, causa eorum recesserant, clamaverunt quietos ab omni juramento, quod eis fecerant, & ita liberi & quieti ab omni juramento & absoluti ab omni conventionem, quam eis fecerant, in dominium et ligeantiam Domini Regis redierint.

* This seems to have been a relic which the emperor had desired, but which Henry would not send him, either because he suspected it not to be a true one, or because the church or convent to which it belonged refused to part with it, and he did not think it proper to force it from them.

4. Et Dominus Rex debet rehabere, ipse, & barones, & homines sui, omnes terras suos, & castella sua, quæ habuerunt xv dies antequam filii sui recederent ab eo. Similiter barones & homines sui qui recesserunt ab eo, & secuti sunt filios suos, debent rehabere terras suas, quas habuerunt xv diebus antequam ipsi ab eo recederent; & Dominus Rex remisit omnem malevolentiam baronibus & hominibus suis, qui recesserant ab eo, ita quod, propter hoc, nullum malum eis faciet quamdiu ei fideliter servient, sicut ligio Domino suo.

5. Et Rex filius ejus similiter pardonavit omnibus, tam clericis, quam laicis, qui cum patre fuerunt, omnem malevolentiam suam; & adsecuravit, in manu Domini Regis patris sui, quod illis, qui servierint ei, nec malum, nec dampnum aliquod, hac de causa, faciet vel perquiret in tota vita sua.

6. Et Dominus Rex, per hanc conventionem, donat Regi filio suo duo castella idonea in Normannia, ad voluntatem ipsius patris; & singulis annis xv millia librarum Andegavensium: Et Ricardo filio suo in Pictavia duo receptacula idonea, unde Domino Regi non possit dampnum provenire; & medietatem reddituum Pictaviæ in denariis: Gaufrido vero filio suo dat in Britannia, in denariis, medietatem reddituum maritaglii filie Comitissæ Conani, quam ducere debet in uxorem, & postquam, concessione Ecclesiæ Romanæ, eam in uxorem duxerit, habebit omnes redditus illius maritaglii, sicut continetur in carta Comitissæ Conani.

7. Prisones vero, qui cum Domino Rege finem fecerunt ante pacem factam cum Domino Rege, viz. Rex Scotiæ, & Comes Leicestriæ & Comes Cestriæ, & Radulphus de Fulgeriis, & obsides eorum, & obsides aliorum prisonum, quos prius habuerat, sint extra conventionem istam. Alii autem prisonum ex utraque parte deliberari debent; ita scilicet quod Dominus Rex obsides accipiet de prisonibus suis, de quibus habere voluerit, & qui dare poterunt: & de aliis habebit securitatem per fidem & juramentum suum, & amicorum suorum.

8. Castella vero, quæ firmata sunt, vel inforcata, postquam guerra incepit in terra Domini Regis, pro voluntate sua debent redigi ad illum statum, in quo fuerunt xv diebus ante gwerram.

9. Præterea sciendum est quod Rex H. filius Regis concessit Domino Regi patri suo, se firmiter observaturum omnes donationes elemosinarum quas dederat vel daturus erat

erat de terris suis, & donationes terrarum quas dederat hominibus suis, vel daturus erat pro servitio suo.

10. Concessit etiam se firmiter & inconvulso observatum donationem quam Dominus Rex, pater suus, fecit Johanni fratri suo, viz. mille libratas reddituum in Anglia de dominico suo, & de escaetis suis, ad voluntatem suam: Et castellum de Notingham, cum comitatu & pertinentiis suis: Et castellum de Merliberga cum pertinentiis suis: Et in Normannia mille libras Andegavensium, & duo castella ad voluntatem patris: Et in Andegavia, et in terra quæ fuit Comitis Andegaviæ, mille libras reddituum Andegavensium; & castellum unum in Andeg. & unum in Cenomania, & unum in Turonia.

11. Concessum est autem a Domino Rege, pro amore filii sui, quod omnes illi qui recesserant ab eo post filium suum, & in recessu suo forisfecerant in terra Domini Regis, ad pacem ejus revertantur; ita quod de catallis, quæ asportaverunt recessu suo, non respondeant: de morte vero, vel prodicione alicujus membri, respondeant secundum judicium & consuetudinem terræ: qui autem ante gwerram, quacunque de causa, aufugerant, & ad servitium filii sui venerunt, pro amore filii sui ad pacem revertantur, si vadium & plegium dederint standi judicio de hiis, quæ ante gwerram fores fuerunt.

12. Illi autem, qui in placito erant quando recesserunt ad filium suum, revertantur; ita quod in eo statu placiti sui sint, in quo erant quando recesserunt.

13. Hanc conventionem firmiter tenendam ex parte sua asscuravit H. Rex filius Regis in manu Domini Regis patris sui. Præterea asscuraverunt H. filius Regis, & fratres sui, quod a Domino Rege patre suo nunquam amplius exigent, ultra donationem præscriptam & determinatam, contra voluntatem & bene placitum Domini Regis patris sui; & quod neque se, neque servitia sua, patri suo subtraherent.

14. Ricardus vero & Gaufridus, filii Domini Regis, devenerunt homines ejus de hiis, quæ eis concessit & dedit.

Cum autem filius ejus Henricus homagium ei facere voluisset, noluit Dominus Rex recipere, quia Rex erat; sed securitatem accepit ab eo.

Testibus,

Testibus,
 R. Rothomag. Archiepiscopo.
 Henrico Baioc. Episcopo.
 Rogero Sag. Episcopo.
 R. Nannet Episcopo.
 Steph. Rhedon. Episcopo.
 G. Electo Lincoln.
 Jo. Decano Sarum.
 Ric. de Humiez Constabulario.
 Ric. de Bellemonte Vic.
 Regin. de Curten.
 Mor. de Creona.
 Willielmo Malo-vicino.
 W. de Hum.
 Gabfrido Pertic.
 Willielmo de Curci.
 Fulch. Saenell.
 Jo. de Solineio.
 Saher de Quinci.
 Rico. de Canvill.
 W. filio Andell Senescallo.
 Alvr. de Sancto Martino Dapifero.
 Gósbarto de Siffencio.
 Rob. filio Ernifii.
 Eudde filio Ern.
 Waltero de Ypra.
 Willielmo Marefcallo.
 Roberto de Ble.
 Elmerio filio Eudon.

Apud Faleriam.

Sub sigillo pendente, cui imprimitur imago Regis in
 solio sedentis, & sinistra manu gerentis sceptrum,

No. VII.

Rymeri Fœdera, Tom. I. p. 39.

This refers
to vol. iii.
p. 173.

Hæc est Conventio et Finis, quem Will. Rex. Scotorum fecit cum Domino suo Henrico Rege, filio Matildis.

WILLIELMUS Rex Scotorum devenit homo ligius. A. D. 1174.
 Domini Regis contra omnem hominem de Scotia, et de omnibus aliis terris suis, et fidelitatem ei fecit, ut ligio Domino suo, sicut alii homines sui ipsi facere solent, et similiter fecit homagium Henrico Regi filio suo, salva fide Domini Regis patris sui.

A. 20 H. II.
Ex magno
Rotulo penes
Canier.

Omnes vero Episcopi, et Abbates, et Clerus terræ Regis Scotiæ, et successores sui facient Domino Regi, sicut ligio Domino, fidelitatem de quibus habere voluerit, sicut alii Episcopi sui ipsi facere solent, et Henrico Rege filio suo, et hæredibus suis.

Concessit autem Rex Scotiæ, et David frater suus, et Barones et alii homines sui Domino Regi, quod Ecclesia Scoticana talem subjectionem amodo faciet Ecclesiæ Anglicanæ, qualem illi facere debet et solebat tempore Regum Angliæ prædecessorum suorum. Similiter Richardus Episcopus Sancti Andreæ, et Ricardus Episcopus de Dunkeldyn, et Galfridus Abbas de Dumfermelyn, et Herbertus Prior de Coldingham concesserunt quod etiam Ecclesia Anglicana illud jus habeat in Ecclesia Scotiæ, quod de jure habere debet, et quod ipsi non erunt contra jus Ecclesiæ Anglicanæ.

Et de hac concessione, sicut ligiam fidelitatem Domino Regi et Henrico filio suo fecerunt, et eos inde assécuratione; ita hoc idem facient alii Episcopi et Clerus Scotiæ per conventionem inter Dominum Regem, et Regem Scotiæ et David fratrem suum et Barones suos factam.

Comites etiam et Barones, et alii homines de terra Regis Scotiæ, de quibus Dominus Rex habere voluerit, facient ei homagium contra omnem hominem, et fidelitatem, ut ligio Domino, sicut alii homines sui facere solent, et Henrico Regi filio suo, et hæredibus suis, salva fide Domini Regis patris sui: similiter hæredes Regis Scotiæ et Baronum et hominum suorum homagium et ligiam

VOL. IV.

Z

facient hæredibus Domini Regis contra omnem hominem.

Præterea Rex Scotiæ et homines sui nullum amodo fugitivum de terra Domini Regis pro feloniam receptabunt in Scotia vel in alia terra sua; (nisi voluerit venire ad rectum in curia Domini Regis, et stare iudicio curiæ) sed Rex Scotiæ et homines sui quam citius poterunt cum capient, et Domino Regi reddent, vel Iusticiariis, aut Ballivis suis in Anglia.

Si autem de terra Regis Scotiæ aliquis fugitivus fuerit pro feloniam in Anglia (nisi voluerit venire ad rectum in curia Regis Scotiæ, vel in curia Domini Regis, et stare iudicio curiæ) non receptabitur in terra Domini Regis; sed liberabitur hominibus Regis Scotiæ per Ballivos Domini Regis ubi inventus fuerit.

Præterea homines Domini Regis habebunt terras suas, quas habebant, et habere debent, de Domino Rege, et de Rege Scotiæ, et de hominibus suis, et homines Regis Scotiæ habebunt terras suas quas habebant, et habere debent, de Domino Rege, et de hominibus suis.

Pro ista vero conventionem et fine firmiter observanda Domino Regi, et Henrico filio suo, et hæredibus suis, a Rege Scotiæ, et hæredibus suis, liberavit Rex Scotiæ Domino Regi castellum de Rockesburg, et castellum de Berwick, et castellum de Gedeworthe, et castellum Puyellarum, et Castellum de Stryvelyn, in misericordia Domini Regis: Et ad custodienda castella illa assignabit Rex Scotiæ, de redditu suo, mensurabiliter ad voluntatem Domini Regis.

Præterea pro prædicta conventionem et fine exequendo liberavit Rex Scotiæ Domino Regi David fratrem suum in obsidem, &

Comitem Duncanum et

Comitem Waldenum et

Comitem Gilbertum et

Comitem Aneguz et

Ricardum de Moreville Constabularium

Niz filium Willielmi et

Ricardum Comyn et

Walterum Corbet et

Walterum Olyfard et

Johannem de Valz et

Ricardum de Morville, Constabularium et

Willielmum de Lyndeseye et

Philipum

Philipum de Colville et
 Philipum de Valoignes et
 Robertum Frembert et
 Robertum de Burneville et
 Hugonem Gyffard et
 Hugonem Rydal et
 Walterum de Berkele et
 Willielmum de la Haye et
 Willielmum de Mortemer

Quando vero castella reddita fuerint, Willielmus Rex Scotiæ et David frater suus liberabuntur. Comites quidem et Barones prænominati, unusquisque postquam liberavit obsidem suam, scilicet filium legitimum quem habuit, et alii nepotes suos, vel propinquiores sibi hæredes, et Castellis, ut dictum est, redditis, liberabuntur.

Præterea Rex Scotiæ et Barones sui prænominati affecuraverunt, quod ipsi, bona fide, et sine malo ingenio, et sine occasione, facient quod Episcopi, et Barones, et homines terræ suæ, qui non affuerunt quando Rex Scotiæ cum Domino Rege finivit, eandem ligeantiam et fidelitatem Domino Regi et Henrico filio suo facient, quam ipsi fecerunt, et quod Barones et homines, qui affuerunt, obsides liberabunt Domino Rege de quibus habere voluerit.

Præterea Episcopi, Comites et Barones conventionaverunt Domino Regi, et Henrico filio suo, quod, si Rex Scotiæ aliquo casu a fidelitate Domini Regis et filii sui, et a conventionem prædicta recederet, ipsi cum Domino Rege tenebunt, sicut cum ligio Domino suo, contra Regem Scotiæ, donec ipse ad fidelitatem Domini Regis redeat.

Prædictam itaque conventionem firmiter observandum bona fide, et sine malo ingenio, Domino Regi, et Henrico filio suo, et hæredibus suis, a Willielmo Rege Scotiæ, et David fratre suo, et a Baronibus suis prædictis, et ab hæredibus eorum, affecuravit ipse Rex Scotiæ, David frater suus, et omnes Barones sui prænominati, sicut ligii homines Domini Regis, contra omnem hominem, et Henrici filii sui, salva fidelitate Domini Regis patris sui.

Hiis Testibus,

Ricardo Episcopo Abricen.

Johanne Saresberien. Decano.

Roberto Abbate Malmshur.

Randulpho Abbate de Mondesburgh.

Herberto Archidiacono Northampton.

Waltero de Constanciis.
 Rogero Capellano Regis.
 Osberto Clerico de Camera.
 Ricardo filio Domini Regis, Comite
 Pictaviæ.
 Galfrido filio Domino Regis, Comite
 Brytanniæ.
 Comite Willielmo de Essex.
 Hugon. Comite Cestriæ.
 Ricardo Humez Constabulario.
 Comite de Millenc.
 Jordano Cossun.
 Humfrido de Bohun.
 Willielmo de Curcy Senescallo.
 Gilberto Malet Senescallo
 Apud Falesiam.

••• I have corrected two or three words in this treaty, which are manifestly errors of the press in the copy which Rymer has given us of it. These corrections are agreeable to another copy of them in *Benedictus Abbas*, Hearne's Edition, t. i. ad ann. 1175.

This refers
 to vol. iii.
 p. 202.

No. VII.

*Benedict. Abb. t. ii. p. 123, 124, 125. Brompton's
 Chronicle, col. 1106, 1107. Hoveden, ad ann.
 1175.*

A. D. 1175.

HÆC est finis & concordia facta apud Windefore in octavis sancti Michaelis anno ab incarnatione Domini M. C. lxxv. inter Henricum regem Angliæ & Rodoricum regem Connahtensem, per Catholicum archiepiscopum Tuamensem, Cantorderi abbatem Sancti Brendani, & magistrum Laurentium cancellarium regis Connahtensis; scilicet, Quod rex Angliæ Henricus concedit prædicto Rodorico ligio homini suo quamdiu ei fideliter serviet, quod sit rex sub eo, paratus ad servitium suum, sicut homo suus, & quod terram suam teneat ita bene & in pace sicut tenuit antequam Dominus rex Angliæ Hyberniam intravit, reddendo ei tributum. Et totam aliam terram & habitatores terræ habeat sub se, & iusticiet, ut tributum regi Angliæ integre per manum ejus persolvant, & sua

sua jura sibi conservent. Et illa quæ modo tenent, teneant in pace quamdiu permanerint in fidelitate regis Angliæ, & ei fideliter & integre persolverint tributum & alia jura sua quæ ei debent, per manum regis Conactæ, salvo in omnibus jure & honore Domini regis Angliæ & suo. Et si qui ex eis regi Angliæ & ei rebelles fuerint, & tributum & alia jura regis Angliæ per manum suam solvere noluerint, & a fidelitate regis Angliæ recesserint, ipse eos justiciet & amoveat; & si eos per se justiciare non poterit, constabularius regis Angliæ & familia sua de terra illa juvabunt eum ad hoc faciendum, cum ab ipso fuerint requisiti, & ipsi viderint quod necesse fuerit. Et propter hunc finem reddet prædictus rex Conactæ Domino Regi Angliæ tributum, scilicet de singulis x animalibus unum corium placabile mercatoribus, tam de tota terra sua quam de alia, excepto quod de terris illis quas dominus rex Angliæ retinuit in dominio suo, & in dominio baronum suorum, nichil se intromittet; scilicet Duvelina cum omnibus pertinentiis suis, & Mida cum omnibus pertinentiis suis, sicut unquam Murchat va Melachlyn eas melius & plenius tenuit, aut aliqui qui de eo eam tenuerunt. Et excepta Wefordia usque ad Duncarvan; ita quod Duncarvan sit cum omnibus pertinentiis suis infra terram illam. Et si Hybernienfes qui aufugerunt redire voluerint ad terram baronum regis Angliæ, redeant in pace, reddendo tributum prædictum sicut alii reddunt, vel faciendo antiqua servitia quæ facere solebant pro terris suis; & hoc sit in arbitrio & voluntate dominorum suorum. Et si aliqui redire noluerint ad dominum eorum regem Conactæ, ipse cogat eos redire ad terram suam, ut ibi maneant & pacem habeant. Et rex Conactæ accipiat obsides ab omnibus quos ei commisit rex Angliæ ad voluntatem domini regis & suam, & ipse dabit obsides ad voluntatem domini regis Angliæ illos vel alios, & ipsi servient Domino regi Angliæ de canibus suis & avibus suis singulis annis de præsentibus suis, & nullum omnino, de quacunque terra domini regis sit, retinebunt contra voluntatem & mandatum domini regis. Testibus hiis,

Ricardo Episcopo Wyntonæ.

Gaufr. Episcopo Elyensi.

Laurentio Duvelienfi Archiepiscopo.

Gaufr. & Nichol. & Rog. Capellanis regis.

Willielmo Comite Essexiæ.

Ricardo

Ricardo de Luci.
 Gaufr. de Pertico.
 Reginaldo de Courteneia.

. This convention between King Henry the Second and Roderick king of Castile is published in Rymer's *Fœdera*, p. 41. not from any record, but from a manuscript copy of the history of Benedictus Abbas in the Cotton Library. It appears to be faulty in some parts, which are here corrected by Hearne's edition of that author from a manuscript in the Harleian Collection, and by two other copies, in Roger de Hoveden, and Brimpton's Chronicle.

This refers
 to vol. iii.
 p. 206.

No. VIII.

In Bib. Cotton. Claudius, B. II. f. 212. A

HANC computationem presentaverunt Piclavenses cardinalibus; quando St. Thomas exulabat, sed non sunt auditi.

Sic computati sunt gradus cognationis inter Regem Anglorum & Reginam. Guill. Rex. Anglorum & Robertus comes Moritonii uterini fratres fuerunt. De Willielmo natus est Henricus. De Henrico Matildis imperatrix. De Matildi Rex Henricus. Item de Roberto comite nata est Beatrix comitissa Piclavensis. De Beatrice Will. comes. De Willielmo comite Alienor Regina.

. By this it appears that Henry and Eleanor were third Cousins of the half blood. Louis and she were fourth cousins of the whole blood.

No. IX.

No. IX.

This refers
to vol. iii.
p. 209.

Diceto Imag. Hist. col. 591, 592.

Dominus Papæ Rex Anglorum.

PROPTER reverentiam sanctæ Romanæ Ecclesiæ, atque devotionem, quam erga eam, & paternitatem ac dilectionem vestram, & fratrum vestrorum, habemus, & semper habuimus, licet plurimum resisterent & reclamarent regni nostri majores & magis discreti, ad instantiam viri discreti & sapientis, Hugonis Petrileonis, sanctæ Romanæ Ecclesiæ cardinalis, Apostolicæ sedis legati, amici & cognati nostri, capitula quæ subscripta sunt in regno nostro tenenda concessimus; videlicet, quod clericus de cætero non trahatur ante judicem secularem in persona sua, de aliquo criminali, neque de aliquo forisfacto, excepto forisfacto forestæ meæ, & excepto laico feodo unde mihi vel alio domino seculari laicum debetur servitium. Concedo etiam quod archiepiscopatus, episcopatus, & abbatie, non teneantur in manu mea ultra annum, nisi urgente necessitate, & evidenti de causa, quæ propter hoc non fuerit inventa, ut diutius teneantur. Concedo etiam quod interfectores clericorum, qui eos scienter, vel præmeditatè, interfecerint, convicti vel confessi coram iusticiario meo, præsentem episcopum vel ejus officialem, præter consuetam laicorum vindictam *, suam & suorum de hæreditate quæ eos contingit perpetuam sustineant exhereditationem. Concedo etiam quod clerici non cogantur facere duellum.

* I know not what to make of these words; for, that all felonies were attended with a forfeiture of the inheritance of the felon convicted, appears from Glanville, l. vii. c. 17. p. 59.

This refers
to vol. iii.
p. 213.

No. X.

Records relating to Itinerant Justices, from Maddox's History of the Exchequer, page 100, 101, 102, 98, 99.

Taken from
p. 100.

ROBERTUS filius Toli debet xxx marcas argenti, de placitis G. de Clinton, *Mag. Rot. 5 Steph. Rot. 1. b. Not. & Derib **.

Sueinus de Porta debet Cs, de placitis Radulfi Basset. *Ib. paul. inf.*

Et de x marcis argenti, de placitis G. de Clinton. *Ib. Rot. 2. a Wiltescira.* Hubertus de Wiltona r. c. de Lxij l, de placitis Radulfi Basset pro thesauro. *Ib. paul. infr.*

Homines Willelmi de Warennia debent Lx marcas argenti, de placitis Eustatii filii Johannis. *Ib. Rot. 3. a. Everwescira.* Burgenfes de Evervic r. c. de xxiiij l & xiiij s & iiij d, de placitis G. de Clinton & Soc. ejus. *Ib. Rot. 3. a.* Accha fil. Ernebrandi r. c. de v marcis argenti, de placitis W. Espee & Eustachii filii Johannis; in operibus Regis de Everwic liberavit, et quietus est. *Ib. Rot. 3. a. Everw.*

Hugo filius Eudonis r. c. de xx s, de placitis W. Espee Eustachii filii Johannis. *Ib. Rot. 3. b. Northumb.*

Robertus & Alwoldus de Lectona r. c. de v marcis argenti, de placitis G. de Clint. *Ib. Rot. 5. a. Hunted.*

Et idem Vic. r. c. de Lxviij s, de placitis G. de Clint. *Ib. Rot. 5. b. Sudreia.*

Aluredus Clericus præpositus de Stanford r. c. de j marca argenti, de placitis G. de Clint. *Inth. l. Et. Q. e. Ib. Rot. 6. a. Essex.*

Gaufridus de Ou r. c. de j marca argenti, de placitis Ricardi Basset. *Ib. Rot. 5. b. Heortfordscira.*

Et idem Vic. r. c. de xvij l & iiij s & iiij d, de placitis G. de Clint. de juratoribus comitatus. In thesauro xv l & iiij s & iiij d. *Ib. Rot. 7. a. Chent.*

* The great roll here cited as the fifth of King Stephen has been proved to belong to the eighteenth year of King Henry the First. See Maddox, *Dissertatio Epistolæ de Magno Rotulo Secretarii*, at the end of his *History of the Exchequer*.

Burgenſes de Doura debent Lx marcas argenti, de placitis Henrici de Port. & Soc. ejus. *Ib. Rot. 7. a. juxta.*

Et idem Vic. r. c. de xx marcis argenti, de placitis Ricardi Baſſet. *Ib. Rot. 7. b. Sudſexa*——de placitis G. Clint. de juratoribus Comitatus. *Ib. Rot. 7. a. in imo. Sudſexa.*

Hugo Malus Vicinus r. c. de iiij marcis argenti, de placitis G. de Clint. *Ib. Rot. 8. a. Staff.* Et idem Gotſo [Dapiſer] r. c. de v marcis argenti, de placitis Milonis Gloec. & Pagani filii Johannis. *Ib. Rot. 8. a. Staff.*

Giſlebertus de Miner. r. c. de v marcis argenti, de placitis Milonis Gloec. & Pagani filii Johannis. *Ib. Rot. 8. a. Gloceſtreſcira.*

Robertus de Strapetona r. c. de xxxij s & iiij d, de placitis G. de Clint. *Ib. Rot. 9. a. Norhampt.* Brichtwius Preſbiter r. c. de x marcis argenti, de placitis Ricardi Baſſet. *Ib. Rot. 9. b. Legrec.*

Radulſus de Carun r. c. de iiij l & xij s & iiij d, de placitis G. de Clint. *Ib. Rot. 10. a. Norfolc.* Fulcherus Rufus r. c. de xl s, de plac. Ricardi Baſſet. *Ib. infra.*

Ricardus Eſturmit r. c. de ij marcis argenti, de placitis Ricardi Baſſet. Fulchardus præpoſitus de Tietford debet xxxv l & ij s & viij d, de placitis G. de Clint. *Ib. Rot. 10. b. Sudſ.*

Et idem Vicecomes r. c. de Lvij s & vj d, de veteribus placitis Radulſi Baſſet. In th l. Et Q. e. Et idem Vic. r. c. de xl s, de placitis G. de Clint. de judicibus Burgi de Buchingeham. In th l. & Q. e. *Ib. Rot. 11. a. Bubcing.* Et idem Vic. r. c. de xl s, de placitis G. de Clint. de juratoribus & minutis hominibus Comitatus. *Ib. Rot. 11. a. Bedſ.*

Goſſbertus Dapiſer Rogeri de Molbrai r. c. de j marca argenti, de placitis G. de Clint. *Ib. Rot. 11. b. Warwic.*

Siwardus de Cantorp. r. c. de x marcis argenti, de placitis G. de Clint. Alanus de Creon r. c. de — marcis argenti, pro hominibus ſuis, de placitis W. de Albin. Alanus filius Joheli Linc. debet C s, de placitis Radulphi Baſſet. *Ib. Rot. 12. a. Linc.* Et idem Vic. r. c. de Lxxiiij marcis argenti & dim. de placitis Ricardi Baſſet de minutis hominibus. *Ib. Rot. 12. b. Linc.*

Peiſſon homo Patricii de Cadurc. debet x marcas argenti, de placitis G. de Clint. dum cuſtodivit terram Patricii. *Ib. Rot. 13. a. Berch.*

Et

APPENDIX TO THE FOURTH BOOK OF

Et idem Vic. debet Lv s, de minutis placitis W. Espec. & Eustachii filii Johannis. *Ib. Rot. 14. b. Chetwodeham.*

Et idem Vicecomes r. c. de vij l & vj s & vij d, de placitis Roberti Arundel & soc. ejus de Foresta. *Mag. Rot. 5. Steph. Rot. 2. a. Dorseta.*

Walterus Espec r. c. de CC marcis argenti de placito Cervi; In thesaurio L marcas argenti, et debet Cl. *Ib. Rot. 3. b. Everwic.*

Et idem Vicecomes r. c. de xxvj s & viij d, de placitis G. de Clint. de Foresta. *Ib. Rot. 5. a. Hunted.*

Et idem Vicecomes r. c. de C & xxx marcis argenti, & dimidia de placitis W. de Albini & soc. ejus de Foresta. *Ib. Rot. 6. a. Essex.*

Gosfo Dapifer debet xxv marcas argenti, de placitis Miltonis Gloec. de Foresta de Episcopatu Cestrie. *Ib. Rot. 8. a. Stafford.*

Ranulfus Parcarius r. c. de xxv l & j marca argenti, de placito Radulfi Basset. *Ib. Rot. 10. a. Norfolk.*

Et idem Vicecomes r. c. de xl & iij s & iij d, de placitis Roberti Arundel de Foresta. *Ib. Rot. 16. a. Devenese.*

Et idem Vicecomes r. c. de xl & v s, de placitis Roberti Arundel & soc. ejus de Foresta. *Ib. Rot. 16. b. Cornwallia.*

P. 102. De placitis Comitibus Gaufridi & Ricardi de Luci. *Mag. Rot. 12. H. II. Rot. 1. a. Linc.*

Ib. Rot. 1. b. Buching. & Bedesf.

Ib. Rot. 2. 3. Norf. & Suthf.

Ib. Rot. 3. b. Everwichsc.

Ib. Rot. 4. a. Not. & Derb.

Ib. Rot. 4. b.

Ib. Rot. 5. a. War. & Legrec.

Ib. Rot. 5. b. Northumb.

Ib. Rot. 6. b. Cantabr. & Huntend.

Ib. Rot. 8. b. Surr.

Ib. Rot. 9. a. in imo Cbent.

Ib. Rot. 10. a. Effexa & Hertfortsc.

Ib. Rot. 6. b. Caerliolum.

Mag. Rot. 12. H. II. passim.

De placitis Comitibus Gaufridi & Ricardi de Luci de hominibus de Lema. *Mag. Rot. 13 H. II. Rot. 3. a. Norf. & Suthf.*

De placitis of the same persons, ut supra. *Ib. Rot. 3 b. Suthfexa.*

De

De placitis, ut supra. *Ib. Rot. 4. a. Lincoliescira.*

De placitis ut supra. *Ib. Rot. 5. b. Northumberl.*

Ut supra; *Ib. Rot. 6. a. Everwich.*

Ut supra; *Ib. Rot. 7. a. Buching. & Bedf.*

Ut supra; *Ib. Rot. 8. a. Northantesc.*

Ut supra; *Ib. Rot. 9. b. Not. & Derb.*

Ut supra; *Ib. Rot. 10. b. Essex & Hertf.*

Ut supra; *Ib. Rot. 11. a. War. & Legrec.*

Ut supra; *Ib. Rot. 11. a. Cant. & Hunt.*

Ut supra; *Ib. Rot. 13. a. Chent.*

Ut supra; *Ib. Rot. 13. b. Surr.*

De placitis Ricardi de Luci; *Ib. Rot. 11. b. Carleslium.*

Nova placita & novæ Conventiones de placitis Alani de Nevilla. *Mag. Rot. 13. H. II. Rot. a. Berrochescira.*

N. P. & N. C. de placitis Alani de Nevilla. *Ib. Rot. 4. b. Lincol.*

Ut supra; *Ib. Rot. 4. b. Staff.*

Ut supra; *Ib. Rot. 5. a. Salopescira.*

Ut supra; *Ib. Rot. 5. a. Winchest.*

Ut supra; *Ib. Rot. 5. b. Heref. in Wallis.*

Ut supra; *Ib. Rot. 5. b. Northumb.*

Ut supra; *Ib. Rot. 6. b. Everwich.*

Ut supra; *Ib. Rot. 7. a. Buching. & Bedf.*

Ut supra; *Ib. Rot. 8. a. Northantescira.*

De placitis Alani de Nevilla. *Ib. Rot. 8. b. Rotel.*

Ut supra; *Ib. Rot. 9. a. Witt.*

Ut supra; *Ib. Rot. 9. b. Not. & Derb.*

Ut supra; *Ib. Rot. 10. a. Glouc.*

Ut supra; *Ib. Rot. 11. a. Cant. & Hunt.*

Ut supra; *Ib. Rot. 12. a. Hantescira.*

Nova placita & novæ Conventiones de Forestis, per Alanum de Nevilla. *Ib. Rot. 11. b. Droghescira.*

De placitis Archidiaconi Pictavenis & Guidonis Decani & Reginaldi de Warennæ, & Willielmi Basset. *Ib. Rot. 3. b. Essex & Hertfordscira.*

De placitis Widonis Decani de Waltham, & Willielmi Basset, & Reginald de Warennæ. *Ib. Rot. 3. b. Lincol.*

De placitis Alani de Nevilla: Radulfus de Ferrariis debet x marcas, pro festinando iudicio suo de Ricardo Fabbro, qui eum & homines suos appellavit de cervo quem eos capere vidit, postea se inde retraxit. *Ib. Rot. 9. b. Droghescira.*

De

APPENDIX TO THE FOURTH BOOK OF

De placitis Widonis Decani, & Willelmi Bassfet, & Reginaldi de Warennā. *Mag. Rot. 15. H. II. Rot. 1. b. Nicholefcira.*

De placitis Archidiaconi Pi&tavenfis, & Widonis Decani, & Reginaldi de Warennā, & ipsius Willielmi Bassfet (who was sheriff that year of War. and Leic.) in Legecestrescira. Item de placitis eorundem in Warwicfcira. *Ib. Rot. 2. b.*

Ib. Rot. 4. b.

Ib. Rot. 10. b.

De placitis Archidiaconi Pi&t. & Widonis Decani, & Reginaldi de Warennā. *Ib. Rot. 12. b. Surreia. & ib. tit. Lundenia & Midd.*

De placitis Comitis Galfridi & Ricardi de Luci. *Ib. Rot. 3. a. Everwicfcira.*

Ib. Rot. 5. b.

De placitis Widonis Decani & Willelmi Bassfet. *Ib. Rot. 5. b. Staff.*

De placitis Decani de Waltham, & Willelmi Bassfet. *Ib. Rot. 8. a. Gioec.*

De placitis Archidiaconi Pi&tavenfis, & Widonis Decani, & Reginaldi de Warennā, & Willelmi Bassfet. *Ib. Rot. 7. b. Norf. & Sudf.* De placitis Comitis Gaufridi, & Ricardi de Luci, de hominibus de Lenna. *Ib. Rot. 7. a.*

De placitis Reginaldi de Warennā & Johannis Cumin in Sumerseta. Placita eorundem in Dorseta. *Ib. Rot. 1. b.*

Ib. Rot. 2. a.

De placitis Reginaldi de Warennā, & Johannis Cumin, Gervasii de Cornhill. *Ib. Rot. 2. b. Devnesfcira.*

In Mag. Rot. præd. anni 15. passim.

De placitis Comitis Galfridi & Ricardi de Luci hominibus de Lenna. De placitis Archidiaconi Pi&taviæ, & Widonis Decani, & Reginaldi de Warennā, & Willelmi Bassfet. De Placitis Widonis Decani & Ogerii Dapiferi. *Mag. Rot. 16 H. II. Rot. 1. a. & b. Norfolch & Sudfolch.*

De placitis Archidiaconi Pi&taviæ, & Reginaldi de Warennā, & Widonis Decani. *Ib. Rot. 1. b. Lundenia & Middlesexa.*

De Placitis Comitis Galfridi & Ricardi de Luci. Item de Placitis Archidiaconi Pi&taviæ. De placitis Alani de Nevill [for the Forest]. *Ib. Rot. 2. a. Northamptonfcira.*

De

De Placitis Willelmi Basset & Alani de Nevill junioris. De Placitis Roberti de Stutevill & Hugonis de Morvill. Nova placita & novæ Conventiones; de Placitis Alani de Nevill junioris [for the Forest]. *Ib. Rot. 2. Carleolium.*

De Placitis Comitis Galfridi & Ricardi de Luci. De P. 99. Placitis Alani de Nevill junioris & Willelmi Basset. *Ib. Rot. 3. a. Everwichscira.*

De Placitis Willelmi Basset & Alani de Nevill junioris. Placita Roberti de Stutevill & Hugonis de Morville. De Placitis Alani de Nevill junioris [for the Forest.] *Ib. Rot. 3. b. Northumberland.*

De Placitis Alani de Nevill [for the Forest]. Item de Placitis Alani de Nevill. De Placitis Reginaldi de Warennæ & Johannis Cumin. *Ib. Rot. 4. a. & b. Wilt.*

De Placitis Alani de Nevill [for the Forest.] N. P. & N. C. De Placitis Alani de Nevill junioris. *Ib. Rot. 4. a. & b. Berockscira.*

De Placitis Alani de Nevill. De Placitis Widonis Decani & Willelmi Basset. De Placitis Alani de Nevill junioris. *Ib. Rot. 5. b. Gloec.*

De Placitis Alani de Nevill. De Placitis Willelmi Basset & Alani de Nevill junioris. *Ib. Rot. 6. a. Nottinb. & Derb.*

De placitis Willelmi Basset & Alani de Nevill junioris. *Ib. Rot. 6. a. & b. Warwicfc. & Legrec.*

De placitis Archidiaconi Piclavæ, & Widonis Decani, & Reginaldi de Warennæ, & Willelmi Basset. *Ib. Rot. 6. b. Cantebr. & Hunted.*

De Placitis Reginaldi de Warennæ, & Johannis Cumin, & Gervasii de Cornhell. De Placitis Alani de Nevill [for the Forest]. *Ib. Rot. 7. a. Devenasc.*

De Placitis Archidiaconi Piclavæ, & Guidonis Decani, & Reginaldi de Warennæ, & Willelmi Basset. De placitis Alani de Nevill [for the Forest.] *Ib. Rot. 8. a. Effexa & Hertf.*

De Placitis Reginaldi de Warennæ & Johannis Cumin. N. P. & N. C. De Placitis Alani de Nevill junioris. *Ib. Rot. 8. b. Dorseta & Sumerf.*

De Placitis Archidiaconi Piclavæ, & Reginaldi de Warennæ, & Decani de Waltham, & Willelmi Basset. De Placitis Alani de Nevill [for the Forest]. *Ib. Rot. 9. a. Hantescira.* De Placitis Reginaldi de Warennæ & Johannis Cumin. *Ib. Rot. 9. Civitas Wintoniæ.*

De

APPENDIX TO THE FOURTH BOOK OF

De Placitis Widonis Decani & Willelmi Basset. De Placitis Alani de Nevill [for the Forest]. De Placitis Ricardi de Luci. (These last I think were old Pleas, or Pleas of a former year.) *Ib. Rot. 9. b. Staff.*

De Placitis Archidiaconi Pictaviæ, & Guidonis Decani, & Reginaldi de Warennæ, & Willelmi Basset. De Placitis Archidiaconi Pictaviæ & Widonis Decani. *Ib. Rot. 10. a. Sudfexa.*

De Placitis Comitibus Galfridi & Ricardi de Luci. De Placitis Widonis Decani, & Reginaldi de Warennæ, & Willelmi Basset. De Placitis Willelmi Basset & Alani de Nevill. *Ib. Rot. 10. a. & b. Nicholeiscira.*

De Placitis Archidiaconi Pictaviæ, & Widonis Decani, Reginaldi de Warennæ, & Henrici filii Geroldi Cameraarii. *Ib. Rot. 11. a. Cbeut.*

De Placitis Archidiaconi Pictavenfis, & Widonis Decani, & Reginaldi de Warennæ. De Placitis Alani de Nevill. *Ib. Rot. 11. b. Surreia.*

De Placitis Archidiaconi Pictavenfis, & Widonis Decani, & Reginaldi de Warennæ & Willelmi Basset. De Placitis Widonis Decani & Ogeri Dapiteri. Mag. Rot. 17. H. II. a. Norf. & Sudf.

v. 100.

De Placitis Archidiaconi Pictavenfis, & Reginaldi de Warennæ, & Decani de Waltham, Willelmi Basset. Mag. Rot. 17. H. II. Rot. 3. a. Huntescira.

De Placitis Reginaldi de Warennæ & Johannis Cumin. *Ib. Rot. 3. b. Civit. Wintania.*

Ib. Rot. 3. b.

De Placitis Willelmi Basset & Alani de Nevill junioris. *Ib. Rot. 4. a. Nat. & Darb.*

De placitis Ricardi de Luci. *Ib. Rot. 4. a.*

De Placitis Alani de Nevill junioris & Willelmi Basset. *Ib. Rot. 5. a.*

Ib. Rot. 5. b. Northumberland.

De Placitis Roberti Stutevill. *Ib. Rot. 5. b. Carleahum.*

De Placitis Widonis Decani & Willelmi Basset. *Ib. Rot. 6. a. Gloucesterscira.*

De Placitis Willelmi Basset & Alani de Nevill junioris. *Ib. Rot. 6. b. War. & Legrec.*

De Placitis Widonis Decani, & Reginaldi de Warennæ, & Willelmi Basset, & Alani de Nevill junioris. *Ib. Rot. 7. a. Lincolncscira.*

De

De Placitis Archidiaconi Pictaviæ, & Widonis Decani,
& Reginaldi de Warena, & Willielmi Basset. *Ib. Rot.*
7. b. Cantabr. & Hunt.

Ib. Rot. 8. a. Essexæ & Hertf.

Ib. Rot. 8. b. Sudsexæ.

De Placitis Archidiaconi Pictaviæ, & Widonis Decani,
& Reginaldi de Warena & Henrici filii Geroldi Came-
rarii. *Ib. Rot. 9. a. Cbent.*

Ib. Rot. 9. b. Surreia, & Lundonia & Midd.

Mag. Rot. prædicti anni 17. passim.

No. XI.

This refers
to vol. iii.
p. 218, 219.

From Benedic. Abb. t. i. p. 136.

*“ Hæ sunt Assisæ factæ apud Clarendune, et postea recor-
“ datæ apud Northamptoniam.*

*“ SI quis reatus fuerit coram Justiciariis Domini Re-
“ gis de Murdro, vel Latrocínio, vel Roberia, vel
“ Receptatione hominum talia facientium, vel de Falso-
“ neria, vel iniqua Combustione, per Sacramentum Duo-
“ decim Militum de Hundredo, et, si Milites non ad-
“ fuerint, per Sacramentum duodecim Liberorum Lega-
“ lium hominem, et per Sacramentum quatuor de una-
“ quaque Villa Hundredi, eat ad Judicium Aquæ; et si
“ perierit, alterum Pedem amittat. Et apud Northamp-
“ toniam additum est, pro rigore Justitiæ, quod dexte-
“ rum similiter pugnum cum pede amittat, et Regnum
“ abjuret, et infra quadraginta dies à Regno exulet. Et
“ si ad Aquam mundus fuerit, inveniat Plegios, & rema-
“ neat in Regno, nisi reatus fuerit de Murdro, vel alia
“ turpi Felonia, per commune Comitatus & legalium
“ Militum Patriæ: de quo, si prædicto modo reatus
“ fuerit, quamvis ad Aquam salvus fuerit, nichilominus
“ infra quadraginta dies à Regno exeat, & Catalla sua
“ secum asportet, salvo jure Dominorum suorum, &
“ Regnum abjuret, in Misericordia Domini Regis. Hæc
“ autem Assisæ attenebit à tempore, quo Assisæ factæ sunt
“ apud Clarendone, continue usque ad hoc tempus; et
“ amodo, quam diu Domino Regi placuerit, in Murdro,
“ et Proditione, & iniqua Combustione, et in omnibus
“ prædictis*

“ prædictis Capitulis, nisi in Minutis Furtis & Roberiis,
 “ quæ facta fuerunt tempore Guerræ, sicut de Equis, &
 “ Bobus, et minoribus rebus.

“ Item, nulli liceat, neque in Burgo neque in Villa,
 “ hospitari aliquem Extraneum, ultra unam noctem, in
 “ domo sua, quem ad Rectum habere voluerit; nisi
 “ Hospitatus ille Essonium rationabile habuerit, quod
 “ Hospes domûs monstret vicinis suis. Et cum recesserit,
 “ coram Vicinis recedat, et per Diem.

“ Si quis saisitus fuerit de Murdro, vel Latrocinio, vel
 “ Roberia, vel Falsoneria, et inde sit cognoscens, vel de
 “ aliqua alia Felonia, quam fecerit coram Præposito
 “ Hundredi vel Burgi, et coram Legalibus Hominibus;
 “ id postea coram Iusticiis negare non poterit. Et si idem
 “ sine saisina coram eis aliquid huiusmodi recognoverit,
 “ hoc simul coram Iusticiis negare non poterit.

“ Item, Si quis obierit Francus-tenens, Heredes ipsius
 “ remaneant in tali Saisina, qualem Pater suus habuit die,
 “ qua fuit Vivus & Mortuus, de Feodo suo: et Catalla
 “ sua habeant, unde faciant divisam defuncti. Et Domi-
 “ num suum postea requirant, et ei faciant de Relevio, et
 “ aliis, quæ ei facere debent de feodo suo. Et si heres
 “ fuerit infra ætatem, Dominus Feodi recipiat Homagi-
 “ um suum, & habeat in Custodia illum quamdiu debue-
 “ rit. Alii Domini, si plures fuerint, Homagium ejus re-
 “ cipiant, et ipse faciat eis quod facere debuerit. Et uxor
 “ defuncti habeat dotem suam, & partem de Catallis ejus,
 “ quæ eam contingit. Et si Dominus Feodi negat Here-
 “ dibus defuncti Saisinam ejusdem defuncti, quam exi-
 “ gunt, Iusticiæ Domini Regis faciant inde fieri recogni-
 “ tionem per duodecim Legales Homines, qualem Saisi-
 “ nam defunctus inde habuit, die qua fuit Vivus & Mor-
 “ tuus. Et, sicut recognitum fuerit, ita Heredibus eis re-
 “ stituant. Et si quis contra hoc fecerit, et inde Attaintus
 “ fuerit, remaneat in Misericordia Regis.

“ Item, Iusticiæ Domini Regis faciant fieri Recogni-
 “ tionem de Dissaisinis factis super Assisam, à tempore
 “ quo Dominus Rex venit in Angliam, proximo post Pa-
 “ cem factam inter Ipsum & Regem filium suum.

“ Item, Iusticiæ capiant Domini Regis Fidelitates in-
 “ fra Clausum-Pascha, et ad ultimum infra Clausum
 “ Pentecosten, ab omnibus, scilicet Comitibus, Baroni-
 “ bus, Militibus, & Libere-tenentibus, et etiam Rusticis,
 “ qui in Regno manere voluerint. Et qui facere nolueri
 “ Fidelitatem

“ Fidelitatem, tanquam inimicus Domini Regis capiatur.
 “ Habent etiam Justitiæ præcipere, quod omnes illi, qui
 “ nondum fecerunt Homagium & Ligantiam Domino
 “ Regi, quod ad terminum, quod eis nominabunt, ve-
 “ niant, & faciant Regi Homagium & Ligantiam sicut
 “ Ligio Domino.

“ Item, Justitiæ faciant omnes Justicias & Rectitudines
 “ spectantes ad Dominum Regem, & ad Coronam suam,
 “ per Breve Domini Regis, vel illorum qui in loco ejus
 “ erunt, de feodo dimidii Militis & infra; nisi tam gran-
 “ dis sit querela, quod non possit deduci sine Domino
 “ Rege, vel talis, quam Justitiæ ei reportent pro dubi-
 “ tatione sua, vel ad Illos qui in loco ejus erunt. Inten-
 “ dant tamen, pro posse suo, ad Commodum Domini
 “ Regis faciendum. Facient etiam Assisam de Latroni-
 “ bus iniquis & Malefactoribus terræ; (quæ Assisa est per
 “ Consilium Regis, filii sui, et Hominum suorum) per
 “ quos ituri sunt Comitatus.

“ Item, Justitiæ provideant, quod Castella diruta pro-
 “ fus diruantur, et diruenda bene prosternantur. Et nisi
 “ hoc fecerint, Dominus Rex Judicium Curie suæ de eis
 “ habere voluerit, sicut de Contemptoribus Præcepti
 “ sui.

“ Item, Justitiæ inquirent de Excaetis, de Ecclesiis, de
 “ Terris, de Feminis, quæ sint de Donatione Domini
 “ Regis.

“ Item, Baillivi Domini Regis respondeant ad Scacca-
 “ rium, tam de Assiso Redditi, quam de omnibus Perqui-
 “ sitionibus suis, quas faciunt in Baillis suis. Exceptis il-
 “ lis, quæ pertinent ad Vicecomitatum.

“ Item, Justitiæ inquirent de Custodiis Castellorum,
 “ et qui, et quantum, & ubi eas debeant; & postea man-
 “ dent Domino Regi.

“ Item, Latro ex quo capitur, Vicecomiti tradatur ad
 “ custodiendum. Et si Vicecomes absens fuerit, ducatur
 “ ad proximum Castellatum, et ipse illum custodiat, do-
 “ nec illum liberet Vicecomiti.

“ Item, Justitiæ faciant quærere per Consuetudinem
 “ Terræ illos, qui à Regno recesserunt. Et nisi redire
 “ voluerint infra terminum nominatum, & stare ad Rec-
 “ tum in Curia Domini Regis, postea utlagentur; et
 “ Nomina Utlagorum afferant ad Pascha, et ad festum
 “ Sancti Michaëlis, ad Scaccarium, et exinde mittantur
 “ Domino Regi.”

This refers
to vol. iii.
p. 223.

No. XII.

*From the Transcript in Selden's Notes to Eadmerus,
p. 193, 194.*

WILLIELMUS Dei Gratia Rex Anglorum, Omnibus ad quos scriptum hoc perveniet salutem et amicitiam Mando et præcipio per totam Angliæ nationem custodiri; Si Anglicus homo (1) compellet aliquem Francigenam per bellam de furto vel homicidio vel aliqua re pro qua bellum fieri debeat vel iudicium inter duos homines, habeat plenam licentiam hoc faciendi. Et si Anglicus bellum noluerit, * Francigena compellatus adleget se iurejurando contra eum per suos testes secundum legem Normanniæ. Item si * Francigena compellat Anglicum per bellum de eisdem rebus, Anglicus plena licentia defendat se per bellum, vel per (2) iudicium, si magis ei placeat. Et si uterque (3) sit invalidus, et nolit bellum vel non posset (4), quærat sibi legalem defensorem. Si Francigena victus fuerit persolvat Regi lx s. Et si Anglicus nolet defendere se per bellum vel per testimonium, adlegiet se per (5) Dei iudicium. De omnibus utlagariæ rebus Rex instituit, ut Anglicus se purget (6) ad iudicium. Et si Anglicus appellat Francigenam de utlagaria, & hoc super eum inveritare velit, defendat se Francigena per bellum. Et si Anglicus non audeat (7) enim probare per bellum, defendat se Francigena pleno juramento, non in verborum observantiis.

(1) *compellat*
Brompton's
Chron. col.
982.

(2) *ferrum*.
Wilkins.

(3) *Ille* Wil-
kins.

(4) *posset*.
Brompton,
Wilkins.

(5) *ferrum*.
Wilkins.

(6) *per fer-*
rum.

Wilkins.

(7) *Eum*
compellare
ad bellum.

* In the Copy given by Wilkins, it stands thus, "Francigena compellans Angium purget se in iurejurando testes secundum Legem Normanniæ." But the sense is much better as I have given it here from Selden.

No. XIII.

This refers
to vol. iii.
p. 224.

From Wilkins, p. 229.

DECRETUM est etiam ibi, ut si Francigena appellaverit Anglum de perjurio, aut murthero, furto, aut homicidio, (1) *Ran*, quod dicunt apertam rapinam, quæ negari non potest, Anglus se defendat per quod melius voluerit, aut iudicio ferri, aut duello. Si autem Anglus infirmus fuerit, inveniatur alium qui pro eo faciat. Si quis eorum victus fuerit, emendet Regi xl. solidos. Si autem Anglus Francigenam appellaverit & probare voluerit iudicio aut duello, volo tunc Francigenam purgare se sacramento non (2) fracto.

(1) *ibidem*
p. 218. *Aut*
Ran, quod
dicunt apertam
rapinam.
(2) *ferri*.
Hoveden.

No. XIV.

This refers
to vol. iii.
p. 228.

From Wilkins, p. 229.

INTERDICIMUS etiam ne quis occidatur, vel suspendatur pro aliqua culpa, sed enerventur oculi, & abscindantur pedes, vel testiculi, vel manus, ita quod truncus remaneat vivus in signum prodicionis, & nequitie sue: secundum enim quantitatem delicti debet poena maleficis infligi. Ista precepta non sint violata super forisfacturam nostram plenam. Testibus, &c.

This refers
to vol. iii.
p. 252.

No. XV.

From Rymer's Fœdera, p. 36.

A. D. 1174

A. 10 H. II.

L. B.

HENRICUS Dei gratia Rex Angliæ, Dominus Hi-
bernæ, Dux Normanniæ, Aquitaniæ, Comes An-
degaviæ, Archiepiscopis, Episcopis, Abbatibus, Prioribus,
Comitibus, Baronibus, Justiciariis, Vicecomitibus, Præ-
positis, Ministris, & omnibus Ballivis & Fidelibus suis,
salutem. Sciatis quod pro salute animæ nostræ & anima-
rum Antecessorum & Hæredum nostrorum, & ad malas
consuetudines abolendas concessimus, & hac Carta nostra
confirmavimus pro nobis & Hæredibus nostris in perpe-
tuum, quotiescumque de cætero contigerit aliquam na-
vem periclitari in potestate nostra, sive in Costera Maris
Angliæ, sive in Costera Picaviæ, sive in Costera Insulæ
Oleronis, sive in Costera Walconiæ, & de navi taliter
periclitata aliquis homo vivus evaserit & ad terram vene-
rit, omnia bona & catalla in navi illa contenta remaneant
& sint eorum quorum prius fuerunt, & eis non deperdan-
tur nomine Wrecci. Et si de navi taliter periclitata nullo
homine vivo evadente contingat quamque bestiam aliam
vivam evadere, vel in navi illa vivam inveniri, tunc bona
& catalla illa per manus Ballivorum nostrorum, vel Hæ-
redum nostrorum, vel per manus Ballivorum ipsorum, in
quorum terra navis fuerit periclitata, liberentur quatuor
probris hominibus custodienda usque ad terminum trium
mensium, ut si illi, quorum catalla illa fuerint, infra ter-
minum illum venerint ad exigendum catalla illa, et pro-
bare possint ipsa catalla sua esse, eis liberentur quæta. Si
vero infra prædictum terminum nullus veniret ad exigen-
dum catalla illa, tunc nostra sint & Hæredum nostrorum
nomine Wrecci, vel alterius qui libertatem habuerit
Wreccum habendi. Si vero de navi periclitata taliter nul-
lus homo vivus evaserit, nec alia bestia sicut prædictum
est, tum bona & catalla in navi illa contenta nostra sint &
Hæredum nostrorum nomine Wrecci, vel alterius ubi na-
vis fuerit periclitata, qui libertatem habuerit Wreccum
habendi. Quare volumus & firmiter præcipimus pro no-
bis & Hæredibus nostris, quod, quotiescumque de cætero
contingeret aliquam navem periclitari, in potestate nostra,
sive

five in Costera Maris Angliæ, five in Costera Picaviæ, five in Costera Insulæ Oleronis, five in Costera Walsconiz, & de navi taliter periclitata aliquis homo vivus evaserit & ad terram venerit, omnia bona & catalla in navi illa contenta remaneant, & sint eorum quorum prius fuerint, & eis non deperdantur nomine Wrecci. Et si de navi taliter periclitata, nullo homine vivo evadente, contingat quamcumque bestiam aliam vivam evadere, vel in navi illa vivam inveniri, tunc bona & catalla illa per manus Ballivorum nostrorum, vel Hæredum nostrorum, vel per manus Ballivorum ipsorum, in quorum terra navis fuerit periclitata, liberentur quatuor probis hominibus custodienda usque ad terminum trium mensium, ut si illi, quorum catalla illa fuerint, infra terminum illum venerint ad exigendum catalla illa, & probare possint ipsa catalla sua esse, eis liberentur quæta. Si vero infra prædictum terminum nullus venerit ad exigendum catalla illa, tunc nostra sint & Hæredum nostrorum nomine Wrecci, vel alterius qui libertatem habuerit Wreccum habendi. Et si de navi illa taliter periclitata nullus homo vivus evaserit, vel alia bestia sicut prædictum est, tunc bona & catalla, in navi illa contenta, nostra sint & Hæredum nostrorum nomine Wrecci, vel alterius, ubi navis fuerit periclitata, qui libertatem habuerit Wreccum habendi, sicut prædictum est. Hiis Testibus,

Venerabili Patre W. Karleol. Episcopo.

W. Valentin. Electo.

J. Com. Linc. & Constabular. Cestrie.

Petro de Malo Lacu.

Henr. de Trublevill. tunc Senescall Wasconiz.

Hug. Dispenf.

Godefrido de Sancumb.

Amaur de Sancto Amando.

Willelmo de Beel.

Galfr. Dispenf.

Galfrido de Cauz.

Barth. Pech.

Johanne Guband, & aliis.

Datum per manum venerabilis Patris Radulphi Cycestr. Episcopi, Cancellar. nostri, apud Merewell. vicesimo sexto die Maii, Anno Regni nostri vicesimo:

No XVI.

Transcribed from Wilkins, p. 219.

These were
promised to
the reader in
the Appendix
to the first
volume.

I.

PAX Sanctæ Ecclesiæ. Cujuscunque Forisfacturæ quis reus sit hoc tempore, & venire potest ad Sanctam Ecclesiam. Pacem habeat vitæ & membri. Et si quis injecerit manum in eum qui matrem Ecclesiam quæserit, siue sit Abbatia, siue Ecclesia Religionis, reddat eum quem abstulerit, & centum solidos nomine Forisfacturæ, et Matri Ecclesiæ Parochiali xx solidos, et Capellæ x solidos. Et qui fregerit pacem Regis in Merchenelega, centum solidos emendet; similiter de compensatione homicidii, & de insidiis præcogitatis*.

II.

Hæc placita pertinent ad Coronam Regis. Et si aliquis aut aliqua vexaverit, (molestaverit aut) malefecerit hominibus illius Ballivæ & de hoc sit attinctus per justitiam Regis, Forisfactura sit dupla illius quam alius quispiam forisfecerit†.

III.

Et qui in Danelega violaverit pacem Regis, cxliv libris emendet. Et Forisfacturæ Regis quæ pertinent ad Vicecomitem, xl solidi in Merchenelega, & l solidi in Westsaxenelega. Et de libero homine qui habet Sac & Soc & Tol & Tem & Infangentheof & implacitatus fuerit, & ad Forisfacturam positus in Comitatu, pertinet Forisfactura ad opus Vicecomitis xl Oræ in Danelega, & de alio homine, qui ejusmodi Libertatem non habet, Oræ xxxii.

* In transcribing this statute I have altered some of the stops, which are evidently wrong, and hurt the sense.

† This is obscurely worded, but the sense of it is, that for any ill treatment of the King's tenants in his bailiwick the forfeiture should be double to what it would be in the case of any other man. This, and some other statutes of William the First, here given, were not in use under Henry the Second, when Glanville's treatise was written.

De his xxxii oris habebit Vicecomes ad usum Regis oras decem, & is qui eum implacitaverit habebit in remedium versus eum oras xii, & Dominus in cujus finibus manserit x oras. Hæc est in Danelega*.

IV.

Hæc est Consuetudo in Merchenelega, si quis appellatus fuerit de Latrocinio, seu de Furto, & plegiatus fuerit venire ad justiciam, & fugerit interim, Plegius ejus habebit iv menses & unum diem ad eum quærendum, & si possit eum invenire, juret se duodecima manu, quod tempore quo eum plegiavit Latro non fuerat, neque per eum esset quod fugerit, nec eum prehendere possit. Tunc reddat Catallum, & xx solidos pro capite, & iv denarios ei qui ceperit ipsum, & unum obolum pro inquisitione, & xl solidos Regi. In Westsaxelege c solidos ad clamorem pro Capite, & iv libras Regi. Et in Danelega, Forisfactura est viii libræ, xx solidi pro Capite, & vii libræ Regi. Et si is potest infra annum & iv dies invenire Latronem, & eum perducere ad justitiam, reddidebunt ei viginti solidos quos acceperint, & fiat justitia de Latrone.

V.

Is qui prehenderit Latronem absque secta & absque clamore, quem dimiserit ei cui damnum fecerit, & venerit postea, justitiam postulaturus, rationi conveniens est, ut det x solidos de† Henguite & finem faciet justitiæ ad primam Curiam, & si confirmetur in Curia, absque licentia justitiæ, sit forisfactura de xc solidis.

VIII.

Si quis alium occiderit, & sit reus confitens, & emendare negaverit, det de suo Manbote Domino pro libero homine x solidos & pro servo xx solidos. Wera Thani est xx libræ in Merchanelega, & in Westsaxelega. Et

* This law only shews the difference of the muls in different parts of the kingdom, as they had been established by the Danes or Saxons inhabiting there. Twelve oras made a pound.

† This word signifies a mulct for the escape of a robber.

APPENDIX TO THE FOURTH BOOK OF

Wera Villani * c solidi in Merchenelega, atque etiam in Westsexenlega.

IX.

Quod ad Weram attinet, primo reddat is qui est de nobili sanguine, Viduæ et Orphanis x solidos; et quod superest, Orphani et cognati inter se dividant.

X.

In Werâ reddere potuit quis Equum non castratum pro xx solidis, et Taurum pro x solidis, et Jumentum pro v solidis †.

XI.

Si quis alium percusserit, & negaverit ultra emendare, primo illi reddat caput suum (id est, capitis pretium, vulgo Wergildum) & illi percussor juret super Sancta quod aliter non potuerit facere, nec ex malitia quacunque ille fuerit in terram dejectus, id quod (causa) doloris est.

XII.

Si plaga alicui eveniat visui aperto, capite toto viso iv denarios det percussor, et de omni osse, quod quis traxerit ex plaga, osse toto viso, iv denarios; postea compositio ei fiat, secundum honores quos ei (os vel caput) fecerint; hoc cum fecerit, si cor suum ei benevolum monstraverit, & consilium suum ei donaverit, accipiat ab illo quod ei abstulerit ‡.

XIII.

Si acciderit ut quis pugnum cujuspian absciderit aut pedem, reddat ei medietatem Weræ, secundum id quod factum est. Sed pro pollice reddat medietatem manus.

* I presume that *Villani* here must be understood to mean, not slaves, but farmers. *Wera* signifies the price of a man's life.

† These prices are remarkable, as they shew the high value of money in those days.

‡ Some parts of this statute are obscure.

Pro digito qui pollicis proximus, xv solidos, de solido Anglicano, hoc est, quatuor denarios. Pro digito longo xvi solidos. Pro altero qui portat anulum, xvii solidos. Pro digito minimo v solidos. Si unguem quis præciderit, pro quolibet v solidos de solido Anglicano, & pro ungue digiti minimi iv denarios.

XIV.

Qui desponsatam alterius vitiaverit, forisfaciat Weram suam Domino suo.

XV.

Etiam qui falsum tulerit iudicium, Weram suam perdat, nisi super sacrosancta (Evangelia) probare poterit, se melius judicare nescivisse.

XVI.

Si quis alterum appellet de Latrocinio & is sit liber homo, & habeat exinde verum testimonium de legalitate, purget se per plenum sacramentum, & alter qui infamis ante fuerat per sacramentum nominatum, videlicet xiv homines legales; attamen si is habere eos poterit, purget se duodecima manu, et si habere non possit, se defendat per iudicium, & appellator jurabit (præter eum jurent vii homines nominati) quod propter malitiam non fecerit, nec propter aliam causam, quam quia jus suum persequeretur. P. 222.

XVII.

Et si quis appellatus fuerit de fractione Monasterii aut Cubiculi, neque fuerit infamis a retro, se purget per xlii legales homines nominatos duodecima manu; & si alias infamia notatus fuerit, purget se per triplum, videlicet per xlviii homines legales nominatos trigesima sexta manu; & si illos habere nequierit, eat ad iudicium per triplum, si audeat ad triplex plenum sacramentum; & si is a retro Latrocinium emendavit, eat ad aquam (i. e. iudicium aquæ). Archiepiscopus habebit de forisfactura xl solidos in Merchenelga, et Episcopi xx solidos, & Comes xx solidos, & Baro x solidos, & Villanus xl denarios*.

* Some parts of this and the former law are obscure.

XIX. Qui

XIX.

Qui foeminam vi compresſerit, forisfacit membra ſua. Qui proſtraverit foeminam ad terram & ei vim inferat, multa ejus Domino eſt x ſolidi. Si vero eam compresſerit, forisfacit membra.

XX.

Qui retinet denarium S. Petri, denarium reddat per juſtitiam S. Eccleſiæ & xxx denarios forisfacturæ. Et ſi de ea re eſt implacitatus per juſtitiam Regis, forisfaciat Episcopopo xxx denarios, & Regi xl ſolidos.

XXI.

Si quis alteri oculum effodiat infortunio, emendet lxx ſolidis ſolidorum Anglicanorum. Et ſi viſus ei reſtituatur, dimidium duntaxat reddatur.

XXV.

De Averio quod quis in manibus habet, qui velit poſtulare furto ſublatum, et ille vult dare vadios et invenire plegios ad proſequendum appellum ſuum, tunc incumbit illi qui rem habuerit in manibus nominare warrantum ſuum, ſi eum habuerit; et ſi non habuerit eum, nominabit ſuum vadem primarium, et teſtes ſuos, et habebit eos ad diem, et ad terminum, ſi eos habeant aut eos habere poterit. [All the reſt of this ſtatute is ſo obſcure, from the faults of the MS. or the obſolete terms, that I do not think it worth giving].

XXVI.

F. 241.

De Murdro Francigenæ occiſi, & homines hundredi non prehendant & ducunt ad juſtitiam infra viii dies ut ostendat ob quam cauſam fecerit, reddant Murdri nomine xlvii Marcas.

XXX. De

XXX.

De tribus, viis, videlicet Wetling-street, & Erming-street, & Fosse. Qui in aliqua harum viarum hominem itinerantem sive occiderit sive infilierit, is pacem Regis violat *.

XXXI.

Si Latrocinium sit inventum, in cujuscunque terra sit, P. 225. et latro simul, Dominus terræ & Uxor ejus habebunt medietatem bonorum Latronis, & vendicatores eorum Cattalla si illa invenerint, & alteram medietatem, si repertum sit infra Sache & Soche, perdat Uxor, & Dominus habebit †.

XXXV.

Si morti damnata sit aut membrorum mutilationi femina impregnata, de ea non fiat justitia priusquam partuerit.

XXXVII.

Si pater deprehenderit filiam in adulterio in domo sua, seu in domo generi sui, bene licebit ei occidere adulterum ‡.

XXXVIII.

Siquis ex necessitate alterum occiderit, aut, propter gubernationem faciliorem, ego jecero res tuas de navi ob metum mortis, de hoc non potes me implacitare. Nam licet alteri damnum inferre ob mortis metum, quando periculum evadere non potest; & si de hoc me accuses, quod ob metum

* I do not understand why more in these roads than elsewhere: for all homicides or assaults were breaches of the king's peace.

† I do not well understand the reason of the latter part of this statute.

‡ Mr. Tyrrell, in commenting upon this statute, expresses his surprise that it should not have given to the husband the power which it has given to the father. I presume the husband had it by the common or customary law, which William the First did not abrogate, but made this addition to it for the better securing of the chastity of the wives of his barons and military tenants, and of those who held under them by knights' service, when the husband should attend him in foreign wars.

APPENDIX TO THE FOURTH BOOK OF

mortis nihil feci * de hoc contemptu, & ea quæ in navi restant dividantur in communi secundum Catalla, & si quis jecerit Catalla extra navim absque necessitate, ea restituat.

XXXIX.

Duo sunt participes ejusdem pacis, & unus eorum implacitatus absque altero; si negligentia sua perdit, non inde debet damnum cedere alteri, qui absens fuit. Nam quod judicatum est inter eos non debet præjudicare iis qui absentes fuerunt.

XLI.

Caute prospiciant ii quibus cura incumbit judicia facere, & judicent uti petunt quando dicunt *dimitte nobis debita nostra*. Et prohibemus ut homo Christianum extra terram non vendat, nec præsertim in paganisum. Caveat homo quod quis animam ejus non perdat quam Deus vita sua redemit. Qui injuriam elevaverit, aut falsum judicium hinc proferet aut odii aut avaritiæ gratia, sit in forisfactura Regis de xl solidis; si non potest allegare quod plus recti facere noluerit, perdat libertatem suam, nisi juxta beneplacitum Regis illam ab eo redimere queat. Et si sit in Danelega, sit Forisfactura de Lahsute; si allegare non potest quod melius facere non voluerit & quod rectam legem & rectum judicium recusaverit, sit forisfactura erga illum ad quem jus hoc pertinuerit; hoc est, si sit erga Regem, vi libræ; si sit erga Comitum, xl solidi; si sit in Hundredo, xxx solidi, & erga omnes eos qui Curiam habent in Anglia, hoc est, juxta solidos Anglicanos. In Danelega qui rectum judicium recusaverit, sit in misericordia de suo Lahsute, nec bene faciat querelam Regi de hoc quod quis ei defecerit in Hundredo aut in Comitatu †.

XLV.

(1) *deleat*
in the
French.

Et qui retatus est, et testibus convictus de (1) *rebellion*, et implacitatus tribus vicibus vitavit, et ad quartam vicem

* In this paragraph, as printed here from Wilkins, the sense is very imperfect. It may be a little mended by putting a full stop after contemptu, but will still remain obscure.

† The sense of this and the following statute seems to be greatly corrupted in several parts.

ostendat

ostendat summonitor tria ejus crimina, nihilominus mandetur homini ut plegium inveniat, et veniat ad jus; et si nolit, si non viderit hominem vivum aut mortuum, capiat quantum habet et reddat potenti catallum suum, & Dominus habeat medietatem residui, et hundredum medietatem. Et si nullus parens aut amicus istam justiciam deforciaverint, forisfaciant erga regem vii libras. Et querat latro quicquid poterit invenire, non habeat warrantum de vita sua, nec per prohibitum placitum poterit aliquid recuperare.

Q. deforciaverit.

XLVIII.

Et qui Latroni occurrerit, et sine clamore eum permiserit abire, emendet juxta valorem Latronis, aut se purget plena lege quod illum Latronem esse nescivit: et qui clamorem audierit & superfederit, superfessione Regis emendet aut seipsum purget.

L.

Si quis infra Hundredum incusatus fuerit, iv homines eum retineant, se duodecima manu purget, & si aufugerit pendente accusatione, Dominus reddat Weram suam, & si Dominus incusetur quod per eum abire permittitur, se purget sexta manu, et si non posset, emendet versus Regem, & sit utlagatus.

LIII.

Volumus autem & firmiter præcipimus, ut omnes homines, quos nobiscum adduximus aut post nos venerint, sint sub protectione & in pace nostra per universum regnum prædictum, & si quis de illis occisus fuerit, Dominus ejus habeat intra v dies homicidam ejus si poterit; sin autem *, incipiat perfolvere nobis xlv marcas argenti quamdiu substantia Domini illius perduraverit. Ubi vero substantia Domini defecerit, totus hundredus in quo occisio facta est communiter solvat quod remanet †.

V. Cart. Regis Willielmi Conqueritoris de quibusdam statutis. Wilk. p. 228.

* Something seems to be wanting here.

† This and some other statutes of this king were extraordinary precautions taken to prevent the murdering of foreigners whom he had brought over with him, or who came, upon his encouragement, to settle in England under his protection.

The following statute was by mistake not inserted among the civil laws of William the Conqueror, given in the Appendix to the first volume.

XXXVI.

Si quis intestatus obierit, liberi ejus hereditatem sequenter dividant.

This appears to have been changed by the prevalence of feudal principles over the old English customs in the time of Henry the Second. For military fiefs became impartible, and, with regard to chattels, Glanville says, "Cum quis vero intestatus decesserit, omnia catalla sua sui Domini esse intelliguntur; si vero plures habuerit Dominos, quilibet illorum catalla sua recuperabit quas in feodo suo reperiet." L. vii. c. 16.

N O T E S

To be added to those on the Fourth Book of this History, having occurred to me since the printing thereof.

- P. 25. *BEDE* before him had said, that a colony of Ireland, the proper country of the Scots, had come into Britain, under the conduct of Rبهودا, from whom they were called Dalreudini.

By reading a book lately published on * British and Irish Antiquities by Mr. Macpherson; I am induced to consider the authority of Bede on this matter as more doubtful than I had thought it before, and to affirm nothing with certainty concerning the migration of Irish Scots into Britain.

* See Introduction to the History of Great-Britain and Ireland, by James Macpherson, Esq;

The *Irish* or British language spoken in the Scotch Highlands and some of the Scotch Western Isles, gives that very ingenious gentleman, by whom it is well understood, a great advantage on these subjects over all other critics who only understand Greek and Latin, in which he is also well skilled. I therefore leave the whole controversy about this dark part of the Scotch and Irish antiquities to those of the two nations who are masters of the language that was common to both. Nor do I pretend to decide, whether the *Picts* were a race of old unconquered Britons remaining in Caledonia, or retiring into the eastern parts of that country from other southern districts, and retaining there the antient custom of painting their bodies, when the more civilized Britons had left it off, or were a different people, as supposed by Bede and many good modern writers.

That

That the Caledonians were esteemed the bravest people in Britain, at the time when Tacitus wrote, his testimony proves : but whether they were (as that sagacious historian conjectures) a colony of Germans, or a division of those Gauls who first inhabited this isle, it is hard to determine. They might come from some part of the sea-coast of Germany, and yet speak the Gallic language : for Cæsar tells us, that, in antient times, many colonies went out of Gaul into Germany ; and Monsieur Pelloutier, who has written an excellent treatise on the migrations and manners of the antient Celts, finds many Celtic words in the German or Teutonic, which language he well understood. That the northern coasts of Ireland were first peopled from Caledonia can hardly be doubted.

P. 84. *Having thus secured all behind him, he sailed from Milford Haven, with his army, to Ireland, and after a prosperous voyage landed near Waterford, on the feast of St. Luke, in the year eleven hundred and seventy-one.*

Ann. 4.
Edw. II.
Integ. placita
Corone in
Turr. Ber-
mingham.

Since the printing of this book, an Irish record, of the fourth of Edward the Second, has been communicated to me, in which it is set forth that a particular family of the Ostmen of Waterford, descended from a chief named Gerald * Macgillemory, having claimed a right to be governed by the English laws, derived to them from a charter granted to their ancestors by King Henry the Second, an inquisition was ordered, and it was found by a jury, that, on Henry's approach to Waterford, Reginald Macgillemory, an Ostman of great power in that county, and who had lands on the coast adjoining to the city, drew three chains across the harbour, to stop the king and his fleet from entering into it : but the ships broke the chains, and the king, as soon as he landed, apprehended this Reginald and all his adherents, tried them in his own court, and condemned them to be hanged as *rebels* against him, which sentence was immediately executed upon them. The same jury likewise found, that he expelled from the city all the Ostmen, except one of the family of Macgillemory, whose Christian name was Gerald, and who, because he had been always faithful to the English, was suf-

* Macgillemory is evidently an Irish name, and how it came to be given to an Ostman I cannot tell.

suffered to remain in a tower which belonged to him there, with all his family, and afterwards got from the King the charter above-mentioned.

It is, in itself, extremely incredible, that, when Waterford was possessed by a strong English garrison of the earl of Pembroke's troops, an Ostman chief, who had lands adjacent to that city, should be mad enough to do an act of this nature, which, if he had succeeded in hindering the fleet from coming into the harbour, or if any ships had been sunk or endamaged in running against the chains, must have instantly drawn upon him the vengeance of those troops, and, soon afterwards, of all Henry's numerous forces, which he could not have prevented from landing at Wexford. Nor can I conceive that such an extraordinary attempt, if it really had been made, or the very remarkable punishment of it, would not have been mentioned by Giraldus Cambrensis, or the Abbot of Peterborough, or Roger de Hoveden, or William of Newbury, or any one of the English contemporary historians, or Irish Annalists of that age! But a still better proof of the falshood of it is, that the jury speak of a *second coming of King Henry into Ireland*, saying, that Gerald Macgillememory defended his tower in the city of Waterford *usque ad iteratum adventum prædicti Dom. Henrici Regis in Hiberniam*. And they suppose a considerable distance of time to have intervened between his expulsion of the Ostmen out of Waterford, and his return into Ireland, during which a war happened between those so expelled, and some English of his train (*de comitiva sua*) to whom he had given their tenements in that city. *Et duravit guerra et dissensio illa per magnum tempus*. Whereas, it is certain that he came but once into Ireland, and all historians agree, that, during his stay in that realm, all was quiet in those parts which had submitted to him. It is possible that the Gerald Macgillememory here mentioned may have merited a distinction from the rest of the Ostmen, by not engaging in the massacre of the English at Waterford, which happened in the year 1173 or 1174, as Giraldus Cambrensis attests; and V. Hibern. that on this fact, ill related to an ignorant jury by some Expugn. 1. ii. 4. of his descendants, the absurd fictions contained in this record were grounded. The only matter of importance, relating

relating to the acts of king Henry the Second in Ireland, which it really proves is this, that by a charter from him the Ostmen of Waterford obtained a right to be under the law of England in Ireland. For a charter of Edward the First is recited therein, which says, "Quia per inspectionem Cartæ D. Henrici Regis filii Imperatricis, quondam Domini Hiberniæ, proavi nostri, nobis constat, quod Ostmanni nostri de Waterford legem Anglicorum in Hiberniâ habere, et secundum ipsam legem deduci et judicari debent, vobis madamus, &c.

P. 107. *It only appears, that, in the course of the year eleven hundred and seventy two, Adam de Port being arraigned of traiterously conspiring the death of the king, fled out of the realm before a trial, and was outlawed.*

We learn from a record of the year of our Lord 1180 (the 26th of the reign of King Henry the Second) that this Adam de Port payed a thousand marks to the king, as a fine for his own land and his wife's inheritance in Normandy, and to induce the king to pardon him and receive his homage. The words of the record are these,

Ex Magno
Rotulo Pipæ
de Anno 26
Hen. II.
Rot. 10. a.
Sudhante-
scira.

Adam de Port reddit compotum de mille marcis, pro fine terre suæ et hereditatis uxoris suæ in Normanniâ, et ut Rex indignationem suam ei remittat, et homagium suum suscipiat.

From the heavy fine he payed we may reasonably infer, that his pardon was not owing to any proof of his innocence, but was obtained by the merit of some discoveries he had made about this time. They must have been of great moment, to render him worthy of such a grace from Henry after such an offence against him!

P. 241. *It therefore appears that this jury were not properly judges but witnesses of the fact they were called to determine.*

It is easier to see the necessity of a jury's being unanimous, when summoned, not as judges, but as witnesses of a fact, than when they are appointed to judge and determine upon evidence given by others.

P. 246. *And Glanville, speaks of the jury employed in this inquest, as making oibers for the crown, &c.*

Among the records transcribed in the Appendix to this book from the History of the Exchequer, concerning pleas in the reign of Henry the Second, before the itinerant justices, frequent mention is made of *juratores comitatus, et minuti homines comitatus*. They are sometimes named together. For instance, it is said, *Et idem Vicecomes reddidit compotum de xls. de placitis G. de Clint. de juratoribus et minutis hominibus comitatus.*

N O T E S

TO THE

FIFTH BOOK

OF THE

Life of King Henry the Second.

P. 268. *ON the decease of Duke Robert, in the year one thousand and eighty five, Roger, his son by a daughter of the prince of Salerno, succeeded to him in all his Italian dominions; and the count of Sicily, Robert's brother, ruled over that island, as an independant state.*

By an appointment which Duke Robert had made in the year 1081, when he went to make war against the Greek emperor, Alexius Comnenus, he gave to his son the sovereignty of Sicily, together with his Italian dominions; but that part of the grant did not take effect upon his death; the count of Sicily not receiving any investiture from his nephew, as he had done from his brother, nor paying him any homage for that island. It is doubtful in what manner this alteration was made, whether by Robert's last will, or by a voluntary cession of the sovereignty to the count, which his nephew might reasonably be induced to make, in order to gain his assistance, at this juncture of time, against the pretensions of Boamond to the duchies of Apulia and Calabria with all their dependencies.

P. 278.

- P. 278. *His sister Basilea, who attended upon him at the time of his death, sent immediate notice of it as secretly as she could, to Raymond Fitzgerald, her husband, &c.*

Giraldus Cambrensis says, she made use of this expression in her letter about it. I notify to you, my dear, *that my great eye-tooth, which has long been aching, is now fallen*, and that he guessed she meant her father was dead. But it is more probable, as the earl had long been ill, that this was a cypher agreed upon between them, in case of his death while her husband was absent.

- P. 279. *The cause of this was a fixed opinion in the Irish, that walled towns and forts were dangerous to their freedom, and that to them it would always be more advantageous to destroy than possess them.* See Camden in Ireland.

This notion prevailed so long among them, that Con O'Neale, whom King Henry the Eighth, created earl of Tirone, cursed all his posterity who should build any houses, saying, *that by building they would do but as the crow doth, make her nest, to be beaten out by the hawk.* The word *houses* here meant houses of brick or stone, such as the English built in Ireland, which were generally castles, or edifices in walled towns: whereas the Irish dwelt in huts, readily raised or pulled down, like the antient Britons and Germans.

- P. 289. *And the earl (of Flanders) who intended to set out for Palestine on the next Christmas day, was stop'd by a message which the archbishop of Canterbury and the bishop of Ely brought him from Henry, desiring him to put off his journey to the Holy Land till the festival of Easter ensuing, when that king propos'd to accompany him thither, &c.*

The abbot of Peterborough says, that the reason of Henry's desiring this delay, was an intimation given to him, that the intention of the earl in going to Jerusalem, was to get that realm for himself; (*ut ibidem in regem sublimaretur*) which he hoped to prevent by accompanying him thither, at the term propos'd, or sending a force to defend the king, his relation. But it does not appear from any other evidence that this suspicion was well founded, and better reasons may be found for Henry's being

V. Benedict.
Abb t. i. p.
243. ad ann.
1176.

being desirous, that if he should go to the Holy War this year, the earl might go with him.

P. 304. *To oppose Ascededdin the general of Noureddin, &c.*

See Herbert
Dictionnaire
Orientale
Art. Adhed
Lediellah.
Aïob Ben
Schaddi.
Abulfeda.
Vit. Sciasini
Autors Bo-
hadino F.
Sjeddi, p. 2.

This man (as the Arabian writers inform us) was born in Kurdistan, a mountainous part of Assyria, from whence he went to serve at Bagdat under the emir of that city, and there acquired, by extraordinary actions of valour, the surname of *Schirgouch*, that is, *Lion of the Mountain*, corruptly written *Syracou* by the Latin authors of that age: but having the misfortune to kill a man in a quarrel he fled from Bagdat to Mosul, and obtaining a command in the army of Omadeddin Zenghi, was, after the death of that sultan, advanced to the head of it by the son of Zenghi, Noureddin.

P. 301, 302. *He certainly had in view some military operations in the kingdom of France: for, soon after the meeting of the ordinary council at Easter, a parliament was assembled, first at Ely, and then at Windsor, to the last of which places came all the earls and barons, and almost all the tenants of the king by military service, with their horses and arms, prepared to go wherever he should command them, as I find it expressed by contemporary authors.*

V. Benedict.
Abb. t. i. p.
170, 171.

The Abbot of Peterborough, in mentioning a former summons of this year, uses the following words; " *Prætereà, ibidem, per consilium familiarium suorum, mandavit omnibus comitibus, & baronibus, et militibus regni qui de eo in capite tenebant, quod, omni occasione remotâ essent bene parati equis et armis apud Lundonias in Oðavis Clausi Paschæ, secuturi eum inde in Normanniam, et moraturi secum per unum annum in partibus transmarinis, ad custamentum eorum in servitio suo.*"

If this could be depended upon as true, it would prove that the king enjoyed at this time, or endeavoured to usurp, a very extraordinary prerogative, that of ordering all his barons and military tenants in chief to serve him abroad *one whole year at their own charge*. But the testimony of one monk is not sufficient to establish a fact of this nature, contrary to all the known rules of the English feudal law, which limited the service of military vassals to *forty days at their own expence*. Even Hoveden, who commonly

commonly transcribes this historian word for word in his Annals, does not copy him here; but quite omits the mention of so strange a summons, which one cannot suppose that either he, or the other writers of that age, would have taken no notice of, if it really had been sent. There is nothing incredible in the king's having notified to his vassals by baronial or knight's service, that he proposed to keep them a year, abroad, in his service: for they often stayed beyond the term of forty days; but then it was *at his cost*. What this historian adds may be also very true, "Et præcepit, unusquisque, statim visis literis suis, mandasset ei per nuntium suum, et per literas suas, quomodo venire poterit, et cum quot militibus tunc, *sine magno gravamine*." For though they were bound by their tenures to serve him abroad, on his summons, with a certain number of their tenants who held of them by knights service, yet it was not agreeable to the lenity of his government, to exact it of them grievously, that is, beyond what their means could easily enable them to bear.

P. 303. *It chanced that Cardinal Vivian, Pope Alexander's legate into Scotland and Ireland, was lately arrived at Down-Patrick, &c.*

The abbot of Peterborough informs us, that the king and bishops of Scotland had secretly desired, that a legate might be sent to determine the controversy about the subjection of their church to the English. But Vivian, whom the pope had accordingly commissioned to go into Scotland, having landed in England without leave from Henry, that prince ordered the bishops of Winchester and Ely to stop him at Northampton, if he did not take an oath, that he would not do any thing in his legation which might be to the prejudice of the king or kingdom, and with this demand he complied. I would observe hereupon, that this was not a new or extraordinary caution, upon the present occasion, but an exercise of one of those ancient prerogatives and rights of the crown, which Henry had always maintained. However, the oath imposed upon the legate had this good effect, that, if he really was empowered (which I think somewhat doubtful) to take cognizance of the controversy between the two churches without Henry's permission, it stopped him from proceeding; for nothing was done on that matter while he was in Scotland.

I would

See the
fourth book
vol. iii. p.
118, 119.

See also Ap-
pendix p.
310.

T. i. ut fu-
pra.

See p. 326.
of vol. iii.

I would further remark, that, if any proof were necessary to shew, that the expression made use of by Peter de Blois, in his letter to Pope Alexander the Third, written in Henry's name, and of which I have taken particular notice in a former part of this volume, was authorized by that king, this would abundantly prove it. For a vassal of the see of Rome, acknowledging himself such, could not possibly have maintained a royal prerogative so inconsistent with that state. He could not have asked a legate sent from his lord, (as the Abbot of Peterborough says he did) *by whose leave he came into his realm?* nor would he have dared to forbid him to proceed on his journey through that realm into Scotland, unless he would give the security above-mentioned: much less would the legate have submitted to give it, as he did very quietly. This whole transaction, and another of a similar nature, in the year 1178, undeniably indicate an entire independance of Henry on the pope, with respect to his regal dignities, and as great a jealousy in him, as in any of his predecessors, lest those dignities should be hurt by any ministers of the pope coming into his kingdom, or even passing through it, on any pretence whatsoever, without his leave.

P. 316. *It is only said, that the answer displeasing him greatly, he summoned thereupon all the bishops of England to meet the barons and military tenants in chief, who were to attend him in arms at Winchester, and by their joint advice delayed, &c.*

T. i. p. 226,
227.

The words of Benedict, abbot of Peterborough, are these, "Quod cum audisset, nec sibi in aliquo placuisset, mandavit archiepiscopo Cantuariensi et episcopis regni, quod in Octabis Sancti Johannis Baptistæ essent ad eum apud Wintoniam; et ita factum est. Venerunt enim illuc ad eum comites et barones et milites Regni sui, per summonitionem, paratis armis et equis secum transfretare in Normanniam. Venitque illuc ad eum Willelmus Rex Scotiæ. Congregatis itaque omnibus in urbe Wintoniæ Rex per concilium eorum transfretationem suam distulit, &c."

From hence one might think that the bishops, earls, barons and military tenants composed a parliament.

T. i. p. 130.

But the same author describing the parliament held at Northampton, which made laws and confirmed the statutes of Clarendon, says, "Venit D. Rex usque Northampton,"

"thampton, et magnum ibi celebravit concilium de statu
 "Regni sui, *coram episcopis, et comitibus et baronibus*
 "*terre sue*," which description would make the members
 of that assembly only bishops, earls, and barons, if he
 did not afterwards add these words, *et per concilium co-* T. i. p. 130.
 "*mitum, et baronum et militum, et hominum suorum hanc*
 "*scriptam assisam fecit.*" Here to the spiritual and
 temporal barons are added, not only the military tenants,
 but all the others who held in any manner of the king,
 "*et hominum suorum.*" I would likewise observe, that,
 in the assembly at Winchester before-mentioned, those
 who held of the barons by military tenures must be un-
 derstood as comprehended among the *milites regni*, because
 the barons never served without others under them, which
 sub-vassals composed the body of the army; and because
 the same author tells us, a little before, that almost the
 whole shipping of England and Normandy was gathered
 together at Portsmouth and Southampton, to carry these
 forces into France. *Per enim omnes naves portuum maris* T. i. p. 212.
Angliæ et Normanniæ, per mandatum Regis, convenerunt
apud Portesmutbam et Suthamptonium ad milites istos trans-
fretandos in Normanniam cum ipso rege. Yet I think this
 assembly was not a full parliament, because nothing was
 there done to bind the whole nation or community of the
 kingdom. But in that of Northampton where laws were
 made and confirmed, it may be presumed all the orders
 wherein the legislative power resided were in some man-
 ner present. The passage above-cited mentions indeed
 only tenants in chief of the king; but it can no more be
 proved from thence that no others were present, than from
 the passages which name only bishops, earls, and barons,
 as composing great councils, that the inferior tenants in
 chief of the king had no place therein. I have shewn in
 former notes what evidence we have of a right in *all the*
freemen to concur in making laws and other acts which
 concerned the whole body of the people, which the reader
 will weigh against the inferences drawn from such descrip-
 tions as this of the parliament of Northampton, given by
 writers of those times, on whose accuracy it is plain one
 cannot rely.

P. 319. *They were also to aff the royal city of Bourges, with all its appurtenances, promised by Louis to Richard, duke of Aquitaine, as a portion for that king's other daughter, Adalais, whom the duke was to marry.*

I follow Mr. Carte in calling this lady *Adalais* as the modern usage for *Adela*, which is the name given to her by contemporary authors. Some of that age call her also *Alesia* or *Alicia*, and others *Adalais*.

Benedict.
Abb. t. i. p.
266.

P. 327. *A contemporary writer says, "there was in all these three princes the same desire to excel in arms which art was taught by these preludes."*

Neubrigenf.
h. v. c. 4.

Another writer of that age (William of Newbury) tells us, that Richard revived the practice of tournaments in his kingdom of England, after he was redeemed from his captivity, to put his English cavalry, by means of these exercises, on an equal foot with the French. The words are remarkable, and worth transcribing here: "*Considerans igitur illustris Rex Ricardus Gallos in conflictibus tanto esse aciores quanto instructiores, sui quoque regni milites in propriis finibus exerceri voluit, ut ex bellorum solemnium praeludio verorum addiscerent artem usumque bellicum, nec insultarent Galli Anglis militibus, tanquam rudibus et minus gnaris.*"

Tournaments therefore were not (as some modern writers suppose) romantic institutions of barbarous times; but were of singular use to instruct the nobility and gentry, who formed the cavalry of those days, in the dextrous management of their horses and arms. Indeed, all nations desirous to excel in war, have endeavoured to render their public diversions conducive to that purpose; a policy which seems to be too much forgotten at this time in this kingdom.

P. 348. *This established the fame of St. Thomas of Canterbury, and greatly increased the superstitious resort of pilgrims to his tomb.*

Benedict.
Abb. Brom-
ton ad ann.
1179.

Some of the monks who wrote the history of those times, in order to secure more effectually to Becket the honour of this cure, tell us, "that he appeared to the king of France in his sleep, and promised him in the name of our Lord Jesus Christ, that, if he would go to the tomb of the martyr of Canterbury, his son should reco-

" ver

“ ver his health: that the king was persuaded by his
 “ counsellors to pay no regard to this dream; but, twice
 “ the next night, Becket again appeared to him, and the
 “ last time added threats, if he did not speedily obey the
 “ orders of God. Whereupon, looking more attentively
 “ at the bearer of this command, he saw that it was the
 “ blessed martyr himself, and therefore went to the tomb.”

By such fables the whole fabrick of Saint-worship and idolatry in the church of Rome is supported. Diceto declares the purpose of the pilgrimage of Louis to have been, not that he might obtain the recovery of his son, but that, by the merits and intercessions of Becket he might be rendered worthy to pass from a temporal to an everlasting kingdom; *ut in ejus meritis et intercessionibus à regno mutabili transire mereatur ad regnum sine fine mansurum*: which is directly putting Becket in the place of Christ. And Christ himself was desired, in one of the authorised Popish Liturgies, to save the souls of the supplicants, not by his own blood, but by Becker's:

*Tu per Thomæ sanguinem
 quem pro te impendit,
 Fac nos, Christe, scandere
 quo Thomas ascendit.*

Col. 604.
 V. Hornæ
 beatissime
 Mariæ se-
 cundum u-
 sum Sarum,
 Paschis, per
 Nicolaum
 Hocque-
 man, A. D.
 1519. And
 Bishop Je-
 wel's De-
 fence of the
 Apology of
 the church
 of England,
 part ii. c. 18.

What the public opinion was of the greater benefit of oblations to this wonder-working saint, than of those made to Christ, appears from the leger books at Christchurch in Canterbury, where in one year the offerings at the three principal altars stood thus:

At Christ's altar,	—	—	3	25	6
At Becket's	—	—	83	2	3
At the Virgin's,	—	—	63	58	6

And the next year,

At Christ's altar,	—	—	0	0	0
At Becket's,	—	—	95	6	3
At the Virgin's,	—	—	4	1	8

Indeed, the greatest wonder is, not that Christ should have nothing or next to nothing offered to him, when Becket had so much, but that the offerings to the Saint should

should exceed those of the Virgin in the proportion here stated.

P. 349. *The young king Henry was present, and Philip being oppressed under the weight of his crown, from the tenderness of his age and a weakness occasioned by his late fit of sickness, Henry helped to sustain it.*

Benedict.

Abb. Bromton. Hoveden, ed.

ann. 1179.

Hoveden, ed. eundem ann.

Col. 608. a.

pud Decem

Scriptores.

Some historians say that he walked before Philip to the cathedral church of Rheims, carrying in his hand the crown of gold with which that prince was to be crowned. And Hoveden adds, that he did this in right of the duchy of Normandy. But it could only have been as heir to that duchy; for not he, but his father, was then in possession of it. And Diceto affirms that he came to this ceremony only as a brother-in-law to Philip. *Henricus Rex Regis Angliæ filius, et Philippi Regis Francorum sororius, regiæ coronationi Remis interfuit solius affinitatis incitatus et invitatus intuitu.* The same author adds, that to be the more ready in assisting Philip to bear the weight of the crown, he pulled off his upper robe; *rejetâ clamide parator ad obsequium.* But he labours to prove, that nothing done by him upon this occasion imported any subjection or inferiority of the English to the French crown; and, to shew how ancient the independence of the former was, quotes a letter from Charlemagne, in which he, as king of France, styles Offa, king of Mercia and chief of the Saxon Heptarchy, *his dearest brother.* Nevertheless it is probable, that, although Henry might come to this coronation out of regard and affection to his brother-in-law, yet being there he performed the usual services of his charge as great seneschal of France, or such as belonged to those fiefs which he actually held, or expected to inherit. Nor did these in reality (however they might in appearance) impeach the independence of the crown of England. Yet, for fear of misconstructions, he would have acted more wisely, in avoiding, as his father did, to be present at this act.

P. 355. *The chief cause of this thunderbolt's falling on that prince, was his having withdrawn his person and troops from the imperial army, in the year 1175, when the emperor was sustaining a dangerous war against the people of Milan and other rebellious Lombards.*

Some

Some writers say, that the emperor, as soon as he was informed of the Duke of Saxony's having left the imperial camp, put himself at the head of a part of the garrison of the city of Pavia, where he then was, forced his way through the Lombards who were besieging it, and came up with the duke on the banks of the lake of Como; that he threw himself at his feet, and conjured him to return, but the duke did not even deign to raise him up; and that the empress, who was present, said to her husband, "Sir, rise, and remember what has now happened to you; and may God remember it too!"

Chron. Corn.
Schaw. apud
Meibom. i.
1. Hist.
d'Allemagne:
ne, par le P.
Barre, ad
ann. 1175.

But it is incredible that the empress should have accompanied her husband in this expedition, when he was to fight his way through the enemy; and extremely improbable that the emperor, whose spirit was equal to the majesty of his rank, should have thrown himself at the feet of one of his vassals, or that the duke, if he had, should not have raised him up. I make no doubt this tale was invented to justify the proscription of the duke, after he had been put under the ban of the empire.

P. 362. *He also gave to the duke a princely maintenance, and supported his whole family with vast expence to himself.*

The Norman Chronicle of Robert de Monte says, he gave them an allowance of three hundred and fifty pounds a day in Angevin money. But this makes so great a sum, according to the value of silver in those times, that I apprehend the account is not exact. (See note to the First Book, p. 472.)

Yet that they were maintained in a very bountiful manner appears from an entry in the great Roll of the 31st year of H. II. which shews that the duke alone received for his expences from Winchester to London three pounds eighteen shillings in the money of those days, a sum nearly equivalent to what an allowance of sixty pounds sterling, for the charges of such a journey, would be in the present times.

See Maddox,
Hist. of the
Exchequer,
c. x. p. 252.

P. 377. *It is no wonder, that, as these opinions were known, John of Salisbury, who thought very highly of the sanctity of a monastical life, and who hated this prelate for his dislike of Becket, should speak with such acrimony*

mony of him as he does in some of his letters, and charge him with the most atrocious crimes.

V. Epist.
S. T. edit.
Brumali,
T. II. l. 5.
Epist. 91.

In one which he wrote to the archbishop of Sens, he says that this prelate (the archbishop of York) had caused a man, named Walter, who, when a boy, had been his catamite, and repenting of it afterwards complained of what he had suffered, to be deprived of his eyes, and, as he continued to upbraid him with his guilt, got him hanged by corrupting the secular judges. To support this, he (John of Salisbury) alleges the report of many persons of great rank and credit, made to him: "But perhaps (says he) it may be asked how it happened that this offender was not punished for so great and manifest a crime, especially as the blessed Eugenius the third then administered the pontificate? *And indeed I am confident that he would not have escaped, without the industry of the blessed Thomas (meaning Thomas Becket), who obtained, by the help of the venerable Hilary bishop of Chichester, that his purgation should be accepted by Theobald, archbishop of Canterbury, of pious memory.*"

It is strange that John of Salisbury should not have perceived, that *the industry of the blessed Thomas*, in saving one accused of such enormous wickedness, either shewed that he was perfectly convinced of his innocence, and that the bishops of Chichester and Winchester were so too, or that they were all as bad as he. I am unwilling to suppose the latter, and therefore ascribe this foul charge to the hatred and malice of John against the archbishop, rather than to any truth in the report. If the contrary be supposed (as some may think it should on the evidence of this letter) what a dreadful picture does it give of the clergy in those days! John of Salisbury adds, that the criminal prelate, going afterwards to Rome, where they were not well satisfied with the manner of his absolution in England, applied himself to Gregory cardinal of St. Angelo, a most infamous negotiator in such affairs, and employing him to distribute many bribes in that court, by means of this corruption returned home justified. The reader may see an extract of so much of this epistle as relates to this matter in the appendix to this book.

P. 386. *He therefore assembled, as speedily as he could, an army of his vassals, with which he marched to aid Richard,*
• and

and force all the three brothers to put an end to the horrors of so dirful and so abominable a war.

This and several other facts contradict an imputation thrown out against Henry, by one or two antient writers and many of the moderns, as if he had sought, from motives of policy, to excite and foment discord, and civil war itself, among his sons, that they might not unite against him. It is likewise said that this conduct was advised by his son-in-law, the duke of Saxony: but it would have been most imprudent in a fugitive prince, thus to make himself an incendiary in the place of his refuge, and rife dissensions among the brothers of his wife, on whom his children might afterwards come to depend (as they actually did) for assistance: nor do any of the best contemporary writers ascribe to him this advice, or suppose that Henry acted on so detestable a plan.

P 391. This was notified to young Henry by a letter from the primate, which is extant among those of Peter de Blois, whose pen he employed in this business.

Mr. Hume cites this letter, as written in the year 1173, to prove that there were Brabanters then in the service of King Henry's enemies, as well as in his. But the letter itself plainly shews, that it could not have been written then, and must be dated at this time. For the bishops had not then been sureties for young Henry to the king his father; of which guarantee a particular notice is taken in this letter. "*Ubi est intercessio illa, quâ nos et alios Episcopos patri tuo pro te fidejussionis vinculo obligasti?*" and it would have been absurd for the writer of it to blame that prince for making himself a captain of Brabanters, when his father, in whose favour this letter was written, was at the head of an army of the same troops. Nor were these mercenaries then excommunicated, as they are here said to be. "*Et unde hoc tibi, quod Brabantionum factus es ductor, gentique excommunicatæ et perditissimæ adbe-fisti, ut perderes devotissimam tibi gentem.*" But, at this time, they did lie under the sentence of excommunication, past upon them, in the year eleven hundred and seventy-nine, by the Lateran council; and Henry, the son, had an army of them in his pay, but Henry, the father had none.

Hist. of Eng-
land, vol. I.
p. 302.

V. Petri
Bleicensis
epist. 43.

- P. 396. *When this was delivered to that prince, he kissed it, and entreated the prelate to return to his father, and carry to him his last request, &c.*

Ann. par. 2.
ad ann.
1183.

Hoveden adds, that he gave *his cross* to his favourite, William Marechal, that this lord might carry it to Jerusalem, "Et tradidit Willielmo Mariscallo familiari suo crucem suam, Hierosolimam deferendam." But, though he had vowed to take the cross, it does not appear that he yet had taken it; and this circumstance is mentioned by no other writer of those times. Perhaps he may have usually worn in his bosom a cross of gold or silver, and have given that to William Marechal, to be carried to Jerusalem, in memory of the vow he did not live to accomplish.

- P. 398. *Presently after this election, information being given by one of the bishops, that Baldwin had held a private conference with them, concerning the reformation of the state of the church, and had promised to assist them in endeavouring to effect it, and likewise to repair its shattered liberties, Henry called them before him, &c.*

The words of Gervase are, "Voluntariè tamen victus Episcopus exposuit causam, et episcoporum revelavit secretum, quod ecclesiæ Dei, una cum archiepiscopo suo, constanter vellent libertates resarcire dissipatas."

From hence it appears, as well as from other proofs I have mentioned before, that Henry, in conjunction with Baldwin's predecessor, had actually enforced the Clarendon constitutions, which had been confirmed, in the year 1176, by the parliament held at Northampton; but the strongest evidence of it is in the following passage, which I will transcribe from a book of Giraldus Cambrensis de

In Angliâ
Sacra, par. 2.
430.

vitis sex Episcoporum cœtaneorum; "Item, cum circa idipsum temporis, in præsentia Ricardi Wintoniensis Episcopi, de miraculis, quæ tunc cereberrimè fiebant, quidam colloquerentur, inquit Episcopus, qui, quasi de persecutoribus Martyris unus extiterat, multum decepti fuimus de homine illo per habitum illum et fastum, quem exterius (ut videbatur) præferebat; interius autem, sicut ex post facto patuit et quotidie patet, longe dissimilis. Et, cum dixisset quidam, mirum autem quod de articulis illis pro quibus martyr occubuit, nullum ecclesiæ prorsus obtinuit, episcopus, qui plus sensatus erat quam

“ quam literatus, plus in sæcularibus actibus astutus quam liberalibus artibus imbutus, sic respondit, Totum revelam, quantum in ipso fuit, Martyr obtinuit; quia, si successor ejus decimam partem bonitatis et probitatis ejus habuisset, nullum ecclesia de articulis illis amississet. Sed quod ille per strenuitatem eximiam perlaudabiliter acquisivit, iste per ignaviam, peccatis urgentibus, totum amisit.”

P. 423. *The patriarch, who was present at this consultation, together with his colleague, the master of the Hospital of St. John of Jerusalem, desired that prince Richard, or Geoffry Plantagenet, might, as the parliament judged it inexpedient, at this time, for king Henry, their father, to go to the Holy Land, be sent thither in his stead, &c.*

Giraldus Cambrensis adds, that the patriarch desired, Prince John, at least, might be sent on this expedition, if neither of his brothers would go; and that John himself begged it of his father, on his knees, but could not obtain his consent.

“ Sed quoniam nullum aliud a rege responsum patriarcha elicere potuit, ad aliud denique se convertit, rogans, ut vel unum filiorum suorum, et, si non alium, saltem natu minorum Johannem, eis in subsidium principem daret, ut regium semen de Andegavensium stirpe descendens, possit eis vel ex hoc surculo, redivivo germine, suscitari. Ipse vero Johannes (quanquam in Hiberniam ei à patre datam jam tunc cum grandi expeditione mittendus foret) patrios ad pedes se provolvens, & ut Hierosolymam potius mitteretur laudabiliter (*ut fertur*) efflagitans, non impetravit.”

The words *ut fertur* shew, that Giraldus did not hear this from the mouth of John himself, or from any certain information; and, as I do not find it mentioned by any one of the other contemporary writers, I think it deserves no regard: for the age of John at this time rendered him very unfit to be the defender of the Holy Land; and as Sibylla had a son by her first husband, and was married again, there was no probability of the want of a prince of the family of Anjou to inherit that kingdom, if it could be defended, which is the single reason given by Giraldus Cambrensis for this supposed request.

P. 427. *Before the end of that term, in the year eleven hundred and eighty-two, a conference being appointed, &c.*

Giraldus Cambrensis, whose chronology in this part of his history of the conquest of Ireland is very confused and uncertain, seems to place this event before Lacy's recall from that kingdom in the year 1181; but the Irish annals date it in the year 1182.

P. 434. *On the fiteenth of April, King Henry, accompanied by the patriarch of Jerusalem and many English lords, passed from Dover to Whitland, and from thence into Normandy.*

Brompton in his Chronicle relates a supposed conversation between the king and the patriarch, in which the latter very grossly abuses the former, because he would not go in person to the Holy Land at that time. The whole is most improbable, and sets out with a circumstance unquestionably false, viz. that when this discourse passed, the king and the patriarch were taking leave of each other at an English sea-port; whereas it is affirmed by several of the best contemporary writers, that they went over together into France, and did not part from each other till some time afterwards.

V. Directo,
Benedict.
Abb. &
Hoved-n,
ad ann.
1185, 1186.

P. 439. *While these preparations were making, at the end of the month of April, the king went into England, and took with him his queen, whom soon afterwards he again confined in a prison, from which she was not delivered till after his death, when Richard, her son, set her free.*

This fact appears from the following passages in contemporary authors. Benedict Abbot of Peterborough, in relating the transactions of the year eleven hundred and eighty-six, says, "Rex vero Angliæ, cupiens venire in Angliam &c. venit usque Barbeslucum, et ibi navem ascendens, applicuit apud Southamptoniam quinto kalendas Maii. Et adduxit secum Alienor Reginam." And in giving an account of what happened in England after Henry's decease, he writes thus: "Interim Domina Alienor, mater prædicti Ducis Normanniæ, per mandatum illius de ultra mare, liberata est de carcere mariti sui, quo diu detinebatur, & Reginalem curiam circumducens, de

T. ii. p. 545.

Ibid, p. 549.

" de civitate in civitatem, et de castello in castellum, *sicut ei placuit*, profecta est."

Brompton, who wrote a little later, but yet in the same age, transcribes these words, col. 1155.

Gervase of Canterbury likewise says, "*Regina quoque*" Chron. col. 1547.

" *Alienor, quæ, defuncto rege sponso suo Henrico, ad*

" *imperium filii sui, Ducis Ricardi, à diutino carcere li-*

" *berata est*, ibidem, cum proceribus Angliæ et Randolpho

" *de Glanvilla, filii sui ducis adventum expectabat.*"

The words of Diceto, another historian of that age, are these: "*Alienor Regina, quæ per annos plurimos arctè fuerat deputata custodiæ, statuendi quæ vellet in regno potestatem accepit à filio.*" And in another place speaking of that queen, he says, "*A Francis propter consanguinitatem disjuncta fuit per divortium; ab Anglis verò per custodiam carceralem a thoro viri segregata fuit; custodiam dico sedecem annos continuatam.*" In reckoning her imprisonment to have lasted sixteen years, this author forgets her having been set at liberty in the year 1184; but still he confirms the account of her being a prisoner when Richard came to the crown.

That she was confined soon after her arrival in England, with her husband, from France, in the year 1186, may be inferred from no mention being made of her, among those who were present at the king of Scotland's marriage in the palace of Woodstock, that year. But it is strange that no author should have taken any notice, in relating the events of the year 1186, of her having been again committed to prison, or of the cause assigned for it. The only reason I can guess for such an omission is, that, the cause being something which affected her honour, they who wrote under the reign of Richard and John, her sons, were afraid to declare it, and therefore only mentioned her having been freed by Richard, on his coming to the crown, or passed over the whole in silence. Yet one should think that her age in the year 1186, or for some time before, would have put her chastity out of the reach of temptation.

P. 443. *It may be worth observation, that some Spanish astrologers, instructed by the Moors in that pretended science, as well as in most of their other real knowledge, &c.*

The Moors who made themselves masters of the greatest part of Spain were a people far more learned than the Goths they subdued, and continued to be so much longer than the times of which I write. What little tincture of mathematicks, astronomy, and physick, was then possessed by the Spaniards, came to that nation by the intercourse they had with these neighbours in times of peace, or by the instructions of captives they had taken in war. But in Africa, as well as in the east, astrology was engrafted on the science of astronomy; and the learned men, who continually resorted from thence to the Moorish courts in Spain, were professors of both. In imitation of these, the astronomers in the courts of the Christian Spanish kings took also upon them to foretell events by the stars. The Sicilians learned it of the African Saracens settled in their isle, and likewise of the Greeks. The English probably drew it from Henry's connexions with the kings of Spain and Sicily, and the frequent pilgrimages they made to the Holy Land in that age.

P. 448. *What provoked him to this deed we are not told*

Since I wrote and printed this, I learn that some Irish annals of Leinster, which Mr. OConor did not impart to me, either because he had not seen them, or because he did not think them of sufficient authority, impute the murder of Lacy to an enthusiastical fury, which had been excited in the mind of OMecy, by the Irish clergy in those parts, against this lord, on account of his having sacrilegiously erected this castle upon the ruins of one of their most antient monasteries, which their tradition supposed to have been the abode of St. Colum Kill, or Columba.

I am also told, that the cruel and treacherous act, ascribed by me to Dermot, in the 49th page of the third volume, on the faith of the Irish annals, as communicated to me by Mr. OConor, was done by the father of that king. However this may have been, that Dermot's government was tyrannical, and odious to his subjects, is certain.

P. 456. *During the course of the above-related events in the year eleven hundred and eighty-six, the infant king of Jerusalem, who had succeeded to Baldwin surnamed the Leper, and was the fifth of that name, died after a reign of no more than seven months*

The death of this prince was suspected to have been caused by poison, given to him by the earl of Tripoli, (as some writers suppose) but (as others say) by his mother. One hardly needs a better proof of the innocence of both, than this uncertainty where to fix the charge. But the reputation of his mother must have been very bad, or the malignity of the faction against her extreme, to make the suspicion of her having been guilty of so horrid a crime find any degree of credit. I ascribe it to the latter rather than to the former, because it does not appear, from any well-attested accounts of her life, that she ever had done any act which could justify the belief of such an imputation, without the clearest proofs; and because, as the government was really in her hands during the infancy of her son, neither she, nor her husband, who shared the power with her, could be tempted to murder him whilst he continued a minor. To what an excess of absurdity the malice of a faction against persons in power will carry defamation, and how easy a reception it meets with in the minds of the vulgar, the history of all countries, in every age, has shewn.

P. 460. *I therefore cannot doubt, that the real motive of his otherwise unaccountable conduct was a passionate love for this princess.*

Two historians, contemporary with Henry the Second, affirm, that, after his death, Richard told her brother Philip, "he could not perform his promise of marrying her, because she had been deflowered by his father, and had brought him a son; which having been proved to that king by the asseverations of many persons, he declared Richard free from his engagement to her." And in fact he did suffer him, notwithstanding that engagement, to marry another woman: for which acquiescence, at a time when his dispositions towards him were far from being kind; there unquestionably must have been some very extraordinary cause. Yet the same historians tell us, that in the year 1192 he offered her in marriage to Richard's brother,

Benedict.
Abb. et
Hoveden,
ad ann.
1191.

earl

Ann. Pars
posterior
f. 412. ad
ann. 1193.

Rymer Fœ-
deri, t. i.
p. 85.

earl John, and one of them (Hoveden) says, that in the following year *John swore to Philip that he would marry his sister*. Had these princes believed that she had borne a child to Henry, or had been seduced by him, it would have been impossible for John to receive, or Philip to make such an offer: and therefore this would destroy the whole credit of the story, if it were not liable itself to great objections: but Rapin Thoyras observes, that the treaty made on this occasion between Philip and John, which is in Rymer's collection, says nothing of this marriage, nor is it probable that the latter, who was already married, should promise to wed another wife. This last objection indeed, would be without reply, if the lawfulness of John's marriage with the earl of Gloucester's daughter had been clear of all doubt; but the archbishop of Canterbury had protested against it, on account of the consanguinity of the parties, and it was afterwards dissolved by the pope for that reason. Possibly therefore the facility of obtaining a divorce may have occurred at this time both to Philip and John, and was the secret foundation of the above-mentioned proposal, which, though agreed on between them, could not decently be made an article of the treaty, 'till such divorce was obtained. But, whatever we may think of the circumstances related by the two historians before-cited, I see no cause to doubt of Henry's having been passionately in love with this princess, and am apt to believe that suspicions conceived of her virtue, while she remained in his power, gave Richard a pretence for breaking his contract with her, and hindered Philip from resenting such an affront to his sister, and to his own honour. These suspicions may have first been suggested by Eleanor, and some parts of Henry's conduct would add weight to the evidence, which she and others, instructed by her might bring, so as to make it desirable for both these kings to put an end to the match without an open quarrel.

P. 465. *So fondly did they believe the fabulous stories about the British Arthur, &c.*

Whoever considers the judicious observations of Milton, in his excellent Introduction to the History of Britain, will find good cause to doubt whether this hero ever had a real existence. It is pretended, indeed, that the controversy was decided in Henry the Second's reign, by his body

body being found between two antient pyramids in the abbey of Glastonbury, on a search that was made for it, by orders of that king, who had heard from a Welsh bard, that, by digging there to the depth of fifteen feet, they would find it. Giraldus Cambrensis affirms, *that he saw it himself*; but then he says that the bones were those of a giant; and in this description of them the other writers of that age, who mention this supposed discovery, concur.

Uther gives us a charter of King Henry the Second, in which that prince confirms to the abbey-church of Glastonbury all privileges granted to it by his royal predecessors, among whom he reckons *Artbur*, and says, that their several charters had been brought and read before him. (*Quorum privilegia et chartas feci diligenter inquiri et coram me legi.*) But the forging of charters in favour of abbeys and churches was a common practice in those days.

It seems to me that all the evidence of Arthur's existence, on which any stress can be laid, is in the songs of Welsh bards, who, it is supposed, had some foundation of truth for many tales they recounted about him and his knights; as the old French *romancers* had for those they told about Charlemagne and his peers, though for the most part fabulous. But of the real existence and acts of that illustrious emperor we have many certain proofs in the writings of Eginhartus, one of his ministers, and other monuments and authentic records of those times in which he lived; all which is wanting with regard to the existence and acts of the supposed British prince. Yet the faith of the English, as well as of the Welsh, in Arthur's exploits was so great, during the age of which I write, that a sword, supposed to have been his, was presented, in the year 1191, to Tancred, king of Sicily, by Richard, king of England, as a valuable gift. The swords of heroes in those days had names given to them, and this was called *Caliburn*. How Richard got it, and whether it was said to have been found in the abbey of Glastonbury together with the body, or in some other place, we are not told; but I presume, when that monarch took it with him out of England, he intended to use it himself in the holy war against the infidels. Certain it is, he performed such marvellous feats of chivalry, in the course of that war, as almost equal those which the bards ascribe to Arthur. I will mention one, attested by the report of those

(De Britannicarum Ecclesiarum Primordiis, c. vi.)

V. Benedict, Abb. & Hoveden, ad ann. 1191.

C. 165.

enemies against whom he fought. The Arabian writer of the Life of Saladin tells us, that he (Richard) at the head of only seventeen horsemen and a small body of foot, being surrounded by the sultan's army, they maintained their ground with such valour, that the Turks and Saracens, quite astonished and discouraged, could not be brought by their leader to renew the attack. "Percel-
 "luntur et attoniti stupent nostri ad hanc ipsorum con-
 "stantiam in medio nostro exercitu, ipsis in orbem cir-
 "cumfuso." He adds, that Richard had, that day, rid along their whole line, and dared them all to a single combat; but not one among them would venture to come out against him. "Namque et relatum mihi, *Anglum*
 " (Ricardum scilicet) *isto die, arreptâ bastâ impetum in*
 "*nostros dedisse, universam aciem ab extrema dextra ad*
 "*extremam sinistram percurrendo, neque quemquam adver-*
 "*sus ipsum processisse.* Iratus igitur ab oppugnatione se
 "avertit sultanus, &c."

P. 469. *On the fourth of July in the year eleven hundred and eighty seven a battle was fought, of which the most circumstantial and authentic relation is given to us by one of the ministers of the sultan, who attended him to this war, and has written a history of his life and acts."*

The history which he wrote is an admirable performance, weighty in matter and sense, perspicuous in the style, but more especially to be valued on account of the knowledge the writer had of the facts which he has related. It is from him that we learn, in the most authentic manner, the actions and negotiations of king Richard the First in the course of the enterprise for the recovery of the Holy Land, and all the particulars of that memorable war. I will give the reader here, in the Latin translation, what he says of the opinion conceived of that prince on his first arrival before the city of Ptolemais, p. 460.

"Rex Angliæ quoque nunc memorandus; præstrenuus
 "inter eos, magnique animi ac firmi pectoris, quem insignes
 "pugnæ nobilitarant; quippe intrepidæ in bellis erat au-
 "daciæ. Hic rege Gallorum minor apud eos censebatur
 "ratione regni atque dignitatis, sed tum divitiis florentior,
 "tum bellicâ virtute multo erat celebrior."

How

- 473. But he speaks of the earl in a manner very hostile,
- and particularly inconsistent with the notion entertained
- by some antient writers, of his having apostatised from
- the Christian to the Mahometan faith, or promised so to
- do.

... was owing. "Tunc sex ex milibus
... Maldewinus de Fortuna, et Radul-
... de Tabaria, cum aliis tribus
... ad Saladinum confugerunt,
... omni ell... proposito atque
... um ind... runt. Saladinus
... dubitabat, re-
... bellatorum
... saxofa et
... in-

Benedict.
Abb. t. ii.
P. 473, 474

“ in via pugnare non poterant, assaultam fecerunt, et eos omni genere pugnandi Saladinus impugnavit et interfecit.” But nothing is said of these traitors having acted in concert with the earl of Tripoli; nor is any charge of treason brought against him. And, from the account which is given, in this letter itself, of the circumstances of the army before the desertion of these six knights, it evidently appears, that, although they had not deserted, Saladin must have destroyed it by the superiority of his forces, and the measures he had taken.

P. 477. *But perceiving that despair inspired them with courage, and desiring to finish his conquest, he allowed them to purchase their lives and liberty with ten bisants of gold for every man in the city, five for every woman, and one for every child; all who should not be able to pay these sums being devoted to bondage.*

Vit. Saladin,
Auctore
Bohadino F.
Siedaddi,
c. 36.

The writer of Saladin's Life, often cited in this work, computes the amount of this capitation tax to be two hundred and twenty thousand pieces of gold, all which he says were given away by the sultan before he left Jerusalem, partly to his officers and the learned men in his court, and partly as a charitable assistance to those who had thus bought their freedom, and were to be conveyed from thence to Tyre. Many other instances of his immense liberality, of his humanity to his captives, of his courtesy to strangers, and of every royal virtue displayed in his actions, are recorded by that author. But he lightly passes over his treason and ingratitude towards his master Nouredin and all the family of that sultan, or excuses them by the service, his making himself so great, at the expence of those princes, did to the cause of religion. This author every where styles his war against the Christians in Syria and Palestine a *Holy War* (*bellum sacrum*) and his soldiers who fell in it, *Martyrs*.

P. 477. *The only offence that was given, by that prince or his army, to any of the Christians, in the taking of Jerusalem, was, that a large gilded crucifix, erected on the top of the church of the Hospital, was pulled down by the soldiers, dragged in the dirt, spit upon, and (as some writers say) whipt through all the streets of the city for two days together.*

Abul-

Abulfeda tells us, that a picture of an Arab scourging L. i. c. 30. Christ was soon afterwards made at Tyre, and sent from thence into Europe, to excite the Franks to undertake a general crusade, which it did with such force, that the very women left their houses, and engaged in that enterprise. He says that the Arab was supposed to be Mahomet; but I rather believe it represented the man who whipped the crucifix above-mentioned through the streets of Jerusalem: and certainly such a picture must have produced great effects on the minds of persons accustomed to worship crucifixes; for even Protestants, who abhor that idolatrous veneration, could not see it without horror.

The Arabian writer of the Life of Saladin mentions Vit. Saladin c. 80, p. 136 another picture, which Conrade of Montferrat had caused to be painted at Tyre, representing the Holy Sepulchre, and a Mahometan horseman trampling over it with the feet of his horse; that was staring upon it. "Hoc saper sepulchro equum delineaverat, ab equite Musulmano infessum, qui monumentum Messie, intermingente equo, conculcabat. Hanc picturam trans mare protulit, in foris et conciliabulis, portantibus eam sacerdotibus, nudo capite, cilicia indutis, luctuosumque vultum ingeminantibus. Jam vero pictura et imagines earum corda vel maxime adficiunt; et quippe sunt radix et fundamentum religionis eorum." A censure too well founded on the idolatry practised by most Christians in those days!

R. 479. *Assaulted the city on the side of the contingent, with thirteen catapults (the great artillery of those times) which threw heavy stones against the walls.*

The words of a letter to Henry, from one of the Knights Templars of Jerusalem, are, "A festo vero S. Martini usque ad circumcissionem Domini obsedit Tyrum tredecim petrariis, die noctuque lapides in eam incessanter jactantibus." V. Benedict. Abb. t. ii. p. 509, 510.

In the second volume of this history, p. 142, I have said that the *petrariæ* were the antient *balistæ*, in which I was deceived by the authority of Pere Daniel; but I am now convinced that they were the *catapultæ* of the ancients; the *balistæ* having been used to throw darts, not stones. What the force of some of these *petrariæ* was, the following excerpt from a writer of the Holy war against

Daniel, Histoire de la Milice Francoise, p. 62

against Saladin, who himself was engaged in that expedition with King Richard the First, and whom I have quoted before, will shew.

Gal. de Vi-
silaut, Ricar-
di Regis Iter
Hierosoly-
mitanum,
l. i. c. 47.

“ Petrariarum hostilium, quarum fuit in civitate copia,
“ una fuit incomparabilis, et magnitudine compactæ ma-
“ chinæ, et, pro voto torquentium, inæstimabilis molis
“ lapides jaculando efficax. Hujus nihil potuit resistere
“ vehementiæ. Incredibilis molis quippe lapides jacie-
“ bat, emissos etiam lapides procul impetus egit.

“ Omnia comminuit jactus, quæcunque feriret.

“ Lapidēs nihilominus, quoties nullo retardarentur ob-
“ staculo, unius pedis longitudine agebantur in terram
“ cadentes. Nonnullas Petrariarum nostrarum percu-
“ tiens in particulas dispersit, vel certè inutiles effecit.
“ Machinas quoque alias plures vel ictu dissolvit, vel par-
“ ticulum, quam attigerat, abscidit. Tanta nimirum
“ erat vehementia jaculandi, et impetus tum pertinax,
“ quod nihil tam solidum, vel ita fuit compactum, cujus-
“ cunque materiæ vel substantiæ, quod posset incolume
“ tam intolerabilis percussuræ sustinere injuriam.”

From other passages in historians of that age it appears, that these engines had almost the effect of our cannon. See a description of them in Folard's Remarks on Polybius. The other machines that are mentioned in the account above-cited were *Balistræ* for throwing darts, or battering rams, or moveable towers of wood.

P. 480. *Nor would she have admitted him to her court and council, had there been the least suspicion of such a perfidy at that time.*

The first notice I find of the earl of Tripoli's being suspected of treason, is in a letter to the king of France, written in the year 1188, from some envoys he had sent to Constantinople. They say that Saladin told some persons there named, *that the earl of Tripoli had delivered to him the Land of Promise*. But no credit is due to the *bear-* says of these men; for they likewise report to their master, that Saladin had sent to Constantinople, with the emperor's consent, *his image, or idol, to be publicly worshipped there*, but, by the grace of God, the ship in which it was sent had been taken at sea, and carried to Tyre.

“ Noveritis etiam quod dominus Saladinus, assensu Im-
“ peratoris Constantinopolitani, misit Constantinopolim
“ *Idolum suum, ut ibi publice adoretur*: sed per gratiam

“ Dei

Benedict.
Abbas, ad
ann. 1188.
t. ii. p. 523.

“ Dei captum est in mari à venientibus, et cum ipsâ navi
 “ ductum est Tyrum.”

P. 487. *Henry's mind, more enlightened, saw that men of all religions are entitled to all the rights of humanity, &c.*

By *rights of humanity* I mean such a treatment as the equity of our government, and the tolerating spirit of the protestant religion, give to the Jews at this time. This goes much beyond what the temper of the age, in which Henry the Second lived, suffered him to afford them: but he is to be praised for having acted towards them with all the lenity in his power. If he did not shew the same indulgence to the errors of those Germans whom the council of Oxford condemned for heresy in his reign, it was because he was taught to consider all dissent from the Roman-catholick faith in any members of that church as far more criminal than the unbelief of the Jews.

P. 488. *The conquest made by that lord of the province of Ulster had just before been secured by the death of O'Lachlin, prince or chieftain of Tyrone, who was killed by an English arrow, in a fight with some maroders in the county of Down.*

By this, and many other instances, in the course of these wars, it appears, that the English conquests in Ireland were principally owing to the use of the long bow in battle, which the Irish infantry wanted: and therefore Giraldus Cambrensis, in his chapter entitled, *Qualiter Hibernica gens sit expugnanda*, advises, that in all engagements with that people, archers should be intermingled with the heavy-armed troops. His words are these: “ *In Hibernicis autem conflictibus et hoc summo perè curandum, ut semper sagittariis militaribus turmis mixtim adjiciantur; quatenus et lapidum (quorum ictibus graves et armatos cominus appetere solent, et indemnes agilitatis beneficio, crebris accedere vicibus et abscedere) e diverso eminus sagittis injuria propulsetur.*”

It is strange that the Irish, who had much intercourse with the Welsh before Henry the Second's time, should not have learnt from that nation, who greatly excelled in archery, that arrows were better weapons to annoy an enemy with than stones, thrown by the hand without the help of slings, which, unless at a small distance, could have little or no effect! The chapter above-cited from Giraldus Cambrensis is very sensibly written, and contains
 good

good instructions to the English leaders in Ireland; on the most proper methods of carrying on the war for reducing all that island to a perfect submission.

P. 490. *This contest was not brought to a final conclusion till after Henry's death.*

V. Hoveden
ad ann.
1188. p. f.
371. & ad
ann. 1191.

Hoveden gives us, in his Annals, two epistles, or bulls, from Pope Clement the Third and Pope Celestine the Third, in which they declare the church of Scotland exempt from any dependance; except on the see of Rome alone. But I am satisfied that the former, which stands in the name of Clement, was never sent by that pontiff: for not only the substance of it is, word for word, the same with that of Celestine; but the date is also the same, viz. Datum Lateranis tertio idus Martii, pontificatus nostri anno primo. And no mention is made of it by Benedictus Abbas, who gives us that of Celestine, wherein nothing is said of any bull on that subject having been obtained to the same effect from his predecessor Clement. Nor is it probable that, before the sovereignty of England over the kingdom of Scotland had been given up by Richard, any pope would have ventured, without the king of England's consent or privity, to free the church of that kingdom from all dependance on the English; and we have no account in Hoveden; or any other writer; of Henry's having been informed of this judgment or decree of the Roman see on this matter, in which he and the archbishops of Canterbury and York had so important a concern. There are some articles which he, certainly, would have opposed; particularly this, "Prohibemus autem, ut controversiæ; quæ fuerint in regno illo de possessionibus ejus exortæ, ad examen extra regnum positorum judicum non trahantur, nisi ad Romanam ecclesiam fuerit appellatum." For these reasons I conclude, that it was a mistake and inaccuracy in Hoveden; which made him ascribe the same bull to two different popes. It is observable, that in the enumeration of bishops in the kingdom of Scotland; that of Wittern (or *Candida Cella*) is omitted; though Cardinal Vivian, as legate from Alexander the Third, had, in the year 1177, suspended a bishop of that see; for not appearing before him, among the other Scotch prelates; at a council held in Scotland. The bishop's plea against him was, that the archbishop of York having been appointed by Alexander

Benedict.
Abb. t. i. p.
211.
Hoveden, ad
ann. 1177.

Alexander apostolical legate within his own province, the legatine power of that metropolitan extended over the see of Wittern, as subject to his province. And this subjection was now confirmed by the pope, who does not reckon that see among those of Scotland, which he decreed should be subject to no foreign jurisdiction but that of Rome.

P. 488. *The barrenness of Queen Jane, probably caused by her having been married too young, destroyed the hopes which her father had entertained, that these opulent countries would long continue subject to princes of his race.*

Notwithstanding the want of issue by this marriage, the king of Sicily retained such affection for his queen and his father-in-law, Henry, that, besides a vast dower which he had settled upon her, he bequeathed to that prince, by his last will and testament, the following legacies; a golden table twelve feet long and a foot and a half broad, with two golden tripods to support it; a tent of silk so large that two hundred knights might eat together therein; four and twenty cups of silver, and as many dishes or plates; sixty thousand measures of wheat, as many of barley, and as many of wine, and an hundred armed galleys compleatly fitted out, and victualled for two years. The provisions and galleys, I presume, were intended, by William, for the service of Henry in the crusade: but, although the latter died before the testator about three months, the will was not altered; and Richard, as heir to his father, received from Tancred, William's son, twenty thousand ounces of gold, in lieu of these bequests.

Benedict.
Abbas t. ii.
p. 612, 613.
Hoveden ad
ann. 1190.

P. 496. *But it is worthy of note, that the German emperor styled him, in the superscription of his letter, his dearest brother, the illustrious king of England; but the Greek neither gave him the epithet illustrious in the superscription, nor any higher title in the body of his letter than your Nobility (vestra Nobilitas.)*

This Greek emperor treated Saladin, a greater potentate than himself, with as little respect as he did the king of England. We have a letter from him to that sultan, written soon after this time, in which he gives him only the title of *Eminence*, taking himself that of *Majesty* with many pompous attributes.

“ Ifaicus

Vita Saladi-
ni, auctore
Bohadino
F. Sjeddadi,
c. 75.

“ Isaicus Rex, credens in Messiam Deum, a Deo corona-
tus, *vicloriosus, semper Augustus, Imperator potentissimus,*
“ *invictissimus, Autocrator Græcorum, Angelus,* ad *eminen-*
“ *tem genere sultanum Ægypti Saladinum, dilectionem et*
“ *amicitiam.* Pervenit scriptio *Eminentie tue.* missa ad
“ *Majestatem meam.*” The whole is in the same style,
and concludes with these words, “ Omnino liquet *Majes-*
“ *tati meæ* aliud nihil me ex amicitia tuâ fecisse lucris,
“ *quam inimicitiam totius Francici generis.*”

P. 498, 499. *He likewise wrote to the king, and reminded him how expedient it was for his kingdom, that the glorious martyr St. Thomas should continue to be an intercessor for him, which he could not expect if he did not maintain the privileges and dignities of the church of Canterbury.*

L. ii. c. 7.

There is a remarkable passage in the *Itinerarium Cambrie* of Giraldus Cambrensis, where that author gravely says, that, as the Irish and Welsh are observed, in this mortal life, to be prone to anger and revenge above all other nations, so *the saints* of those countries, in their life after death, seem to be, more than all others, of a revengeful temper: “ *Sicut natio Hibernica, nec non et*
“ *Cambrica, præ aliis gentibus præcipites in iram et ad*
“ *vindictam in vitâ prout repertiuntur, sic et, in morte vi-*
“ *tali, terrarum earundem Sancti præ aliis animi vindicis*
“ *esse videntur.*”

Now, if Henry believed, with Giraldus Cambrensis, that saints in heaven retained the same temper and passions which prevailed in them while living, the pope's argument, in the letter, to which this note refers, must have greatly affected that king; for he knew the partiality which the living Becket had shewn *for the privileges and dignities of the church of Canterbury*, and he also knew him to have been extremely *vindictive*: so that, in offending against these, he must have been apprehensive, not only of losing the intercession of the saint, but of incurring the terrible fury of his vengeance. He seems, however, to have risked it, upon this occasion, without much fear, thinking, perhaps, that *the glorious martyr's* soul had grown milder in heaven than it had been upon earth, and not quite so partial to the interest of the monks of Christchurch in Canterbury.

I cannot

I cannot leave the subject of *Saint-worship* in the age of which I write, without taking notice of a singular kind of theft, committed by a monk in the twenty-third year of this reign. A certain canon of the abbey of Bodmin in Cornwall stole from thence the body of St. Petroc, and fled with it to the abbey of St. Mevenni in Bretagne. As soon as the loss was discovered, the prior of Bodmin was deputed, to ask the assistance of King Henry the Second, for the recovery of the body. That prince sent an order to his chief justiciary in Bretagne, that he should cause it to be instantly restored. This officer went accordingly, with a powerful force of armed men (*cum armata manu et potenti*) to the abbey of St. Mevenni, and demanded the body. The monks refused, for some time, to deliver up their prize; but, he swearing, that, if they did not soon restore it, he would take it by violence, they surrendered it to the prior, *whole and without diminution*, as they declared upon oath. The prior carried it triumphantly in an ivory box to Winchester, where Henry saw, and *adored it*, (says Benedictus Abbas) and then *let him return in peace, with his saint, to the abbey of Bodmin*. I presume that St. Petroc, however unknown to us, was famous in Cornwall, for miracles worked by his reliques, and that in losing his body the monks of Bodmin apprehended their community would have suffered, not only by being deprived of his patronage, but also by the offerings made at his shrine being transferred to Mevenni. The monks of Canterbury feared a like injury to their convent, if archbishop Baldwin's design of building a church at Hackington near that city, and dedicating it to Becket, should be accomplished.

P. 506. *Geoffry de Lusignan saved his life by flying out of France, from whence he went by sea to Tripoli, where his brother Guy then resided.*

This lord is mentioned, by the writer of the Life of Saladin, among those who were taken captives, together with King Guy, at the battle of Tiberias; but it is certain, from the testimony of many other historians who lived in those days, that he was in Aquitaine when that battle was fought, and did not arrive in the East till the year 1188.

P. 507. *And in a very short time took the city of Cahors, the strong castle of Moissac, all the province of Quercy, and seventeen castles in the neighbourhood of Toulouse.*

It has been mentioned in a former part of this history, that the city of Cahors, and the province of Quercy, with several other parts of the earldom of Toulouse, had been conquered by Henry in the year 1159, and left in his possession by the treaty of peace between him and the earl concluded the next year; but, as it appears that these places were re-united to the earldom before this war, and now regained by Richard, it must be supposed that they had been restored to the earl, by the succeeding convention between Henry and him, in the year 1172, when he acknowledged himself a vassal to that king, as duke of Aquitaine, for his earldom.

See Powel's P. 519. *Philip pursued him three miles, and killed many of his Welsh.*

Hist. of
Wales, p.
227, 228.

This being the last mention made of the Welsh in my account of these times, I will take notice here of a remarkable passage in Dr. Powel's History of Wales, concerning a voyage performed by one of their princes in the 16th year of the reign of king Henry the Second. The words are these:

“ Madoc, another of Owen Gwyneth's sons, left the land in contention betwixt his brethren, and prepared certain ships with men and munition, and fought adventures by sea, sailing west, and leaving the coast of Ireland so far to the north, that he came to a land unknown, where he saw many strange things.”

P. 206.
See also the
Preface to
Wynne's
History of
Wales.

In enquiring what credit is due to this story, it will be necessary to premise, that this part of the history published by Dr. Powel is not taken from the Chronicle of Caradoc of Llancarvan, who (as Powel affirms) ended his collections in the year 1156, antecedent to the date of this supposed event; but is said by Humphry Lluyd, the translator of Caradoc, to have been compiled from collections made from time to time, and kept in the abbeyes of Conway and Stratflur.

See Powel's
Preface and
Wynne's.

We are also told, that the best and fairest copy of these was written by Gutryn Owen in the days of Edward the Fourth, and translated into English by the Humphrey

Lluyd before-mentioned, who flourished in the reign of King Henry the Eighth, and continued the history to the death of Prince Llewelyn ap Gruffyth in the year 1282. But, this gentleman having been prevented by death from publishing his work, it was not sent to the press till the year 1584, when Dr. Powel published it, with many additions and interpolations of his own. The latter says in his preface, "that he had compared Lluyd's translation with the British book, whereof he had two antient copies, and *corrected* the same when there was cause so to do :—" and adds, "that, after the most part of the book was printed, he received another larger copy of the same translation, being *better corrected*, at the hands of Robert Glover, Somerset herald, a learned and studious gentleman in his profession, the which if he had had at the beginning, many things had come forth in better plight than they now be."

It is therefore very doubtful whether the above-cited passage concerning Madoc's voyage gives the sense of the British book which Gutryn Owen had transcribed, as *translated* by Lluyd, or as *corrected* by Powel, and whether we can depend on its being agreeable to the original text. It may be suspected that Lluyd, living after the discovery of America by Columbus, may have dressed up some accounts of traditions about Madoc, which he found in Gutryn Owen, or other ancient Welsh writings, in such a manner as to make them convey an idea, that this prince, who perhaps was a bolder navigator than any of his countrymen in the age when he lived, had the honour of being the first discoverer of that country. Sir Philip Herbert, a writer of the same nation, who is zealous for the truth of this supposed discovery, (which he conceives would give our kings a title to the West Indies) adds to the authority of Gutryn (or Guten) Owen, that of Cynwrick ap Grono, another ancient Welsh bard, and also of Sir Meredith ap Rhees, who lived in the year 1477. The words of the former bard he does not quote, but those of the latter he does, and translates them into English. The poet, speaking in the person of his hero, says,

" Madoc ap Owen was I call'd,

" Strong, tall, and comely, not enthrall'd.

D d 2

" To

" To homebred pleasure, but to fame :

" Thro' land and sea I fought the fame."

P. 129.

This proves indeed that Madoc was famous in those days for some voyage he had made, but, not marking the course, it is of no importance to the matter in question, which entirely depends on his discovering land *to the south-west of Ireland*. Dr. Powel, having given the description above-cited, viz. *that he sailed west, and leaving the coast of Ireland far north, came to a land unknown*, adds the following note :

" This Madoc, arriving in that western country, into which he came in the year 1170, left most of his people there, and returning back for more of his own nation, acquaintance, and friends, to inhabit that fair and large country, went thither again with ten sails, as I find it noted by Gutryn Owen."

And then he gives us some reasons why he takes this *land unknown* to have been some part of Mexico, rather than of Nova Hispania or Florida, as Lluyd had supposed. Without comparing the arguments for their different conjectures (as none of them seem to me to have much weight) I will only say that if Madoc did really discover any part of America, or any islands lying to the south-west of Ireland in the Atlantic ocean, without the help of the compass, at a time when navigation was ill understood, and with mariners less expert than any other in Europe, he performed an achievement incomparably more extraordinary than that of Columbus ! But, besides the incredibility of the thing itself, another difficulty occurs ; that is, to know how it happened that no English historian, contemporary with him, has said a word of this surprising event, which, on his return into Wales, and public report of *the many strange things he had seen*, must have made a great noise among the English in those parts, and would have certainly reached the ears of Henry himself. Why is no notice taken of a fact so important to the honour of his country by Giraldus Cambrensis, who treats so largely of the state of Wales in his times ? One may also be in some doubt, what could have caused a destruction of the colony planted by Madoc, and of all belonging to it, as that in no land, since discovered to the south-west of Ireland, any certain monument, vestige, or memory of it, has ever yet been found ! But the first foundation of all

all enquiry about this adventure, which many good modern writers have inclined to believe, should be a faithful and well-attested translation of the words of Gutryn Owen, or Cynwrick ap Grono, relating thereto, if their writings still remain.

P. 519. *Full of shame and vexation, at having been forced to turn his back on his enemy, which he had never done before, &c.*

I do not deem his retiring (however precipitately) into the castle of Gisors, when attacked by the French during a conference with their king, any exception to the fact, *that he never had turned his back on his enemy before his flight from Mans*; because the flying from a tumult suddenly raised, as that was, in the midst of a treaty of peace, could be attended with no shame; and the proposition here affirmed relates only to actions in fair and open war. See vol. iii. p. 511.

P. 523. *A contemporary writer says, that Philip, in this conference, reconciled Philip with Henry.*

This fact, if true, overturns what some historians have said of Henry's cursing his son Richard, as well as John, on his deathbed, and obstinately refusing to revoke his maledictions, though urged to it by the bishops who attended him in his last moments: nor does that story well agree with other circumstances of his death and behaviour in his sickness, which are mentioned in the most authentic relations.

P. 525. *And, knowing his son, made an effort, with a faint and almost extinguished voice, to express a desire that he should obtain the bishopric of Winchester, or rather the archbishopric of York.*

It may be presumed, Henry thought, that after he should be dead, this lord would have less to fear from any resentments, his brothers Richard and John might have conceived against him, if he was possessed of a high ecclesiastical dignity, than in any civil office; and therefore desired to bring him back into the church, which he had quitted before.

I think it very surprizing, that neither by his will, nor verbally on his death-bed, this king should have taken any notice

See Dugdale's Baronsage, Salisbury.

notice of William, called afterwards Longsword, his other natural son by Rosamond Clifford, and that no writer of those times should have assigned any reason to account for this omission. Richard gave to that lord in marriage the daughter and heiress of William earl of Salisbury, who died in the year 1196, and with her that earldom. He afterwards became a great and famous man.

*The END of the NOTES on the FIFTH BOOK of the LIFE
of KING HENRY the SECOND.*

A P P E N D.

APPENDIX

TO THE

FIFTH BOOK

OF THE

Life of King Henry the Second.

No. I.

This refers
to vol. iiii.
p. 280, 281.

From the Archives of Dublin.

HENRICUS Rex Angliæ, Dux Norm. Acq. & Comes Andeg. Archiepiscopis, Episcopis, Abbatibus, Prioribus, Comitibus, Baronibus, Justiciariis, Vice-comitibus, Præpositis, Ministris, & omnibus fidelibus suis Francis & Anglicis & Hibernensibus totius terre sue, salutem. Sciatis me dedisse & concessisse & presenti charta confirmasse hominibus meis de Bristow Civitatem meam de Divelin ad inhabitandum. Quare volo & firmiter precipio, ut ipsi eam inhabitent; & teneant illam de me & de Heredibus meis bene & in pace, libere & quiete, integre & plenarie & honorifice, cum omnibus libertatibus & liberis consuetudinibus quas Homines de Bristow habent apud Bristow & per totam terram meam. Testibus Will^o de Braosa. Regin. de Curtenai. Hug. de Gundevilla, Will^o filio Aldelmi, Ranulpho de Camilla, Hug. de Creisii, Regin^o de de Pavilla. *Apud Divelin.*

No. II.

This refers
to vol. iii.
p. 281.

No. II.

From the MSS. of the late Bishop Sterne.

A. 30. H. II. **H**ENRICUS Rex Angliæ, Dux Normanniæ & Aquitaniæ, & Comes Andegaviæ, Archiepiscopis, Episcopis, Baronibus, Justiciariis, Vice-comitibus, & omnibus Hominibus terræ suæ, Salutem. Sciatis me concessisse Burgensibus meis de Dublin quod sint quieti de Tholonio & Passagio, & Pontagio, & omni consuetudine per totam terram meam Angliæ, Normanniæ, Walliæ, & Hiberniæ, ubicunque venerint ipsi et res eorum. Quare volo & firmiter præcipio, quod habeant omnes libertates quietancias & liberas Consuetudines suas plene & honorifice sicut mei liberi & fideles Homines. Et sint quieti de Tholoneo &c. Et prohibeo nequis eos super his deturbet contra hanc Chartam meam, super decem librarum forisfacturam. Testibus Ricardo de * Hum. Constabulario, Reginaldo de Courtenays, Ricardo de Camvilla, Willielmo de Lannelleys. Apud Sanctum Laudinum.

Humet.

Tl is refers
to vol. iii.
p. 309.

No. III.

From Ware, Antiq. Hib. p. 237, 238.

HENRICUS Dei gratiâ Rex Angliæ, & Dux Normanniæ & Aquitaniæ, & Comes Andegaviæ, Archiepiscopis, Episcopis, Abbatibus, Comitibus, Baronibus, Justiciariis, & omnibus ministris & fidelibus suis, Francis, & Anglis, & Hiberniensibus, Salutem. Sciatis me concessisse & præsentî chartâ meâ confirmâsse Roberto filio Stephani & Miloni de Cogan, custodiam civitatis meæ de Cork, cum Cantredo quod erat Hostmanorum ejusdem civitatis, quod retineo in manu mea. Ac * habenda & tenenda ea simul, quam diù mihi placuerit, & bene mihi

* There seems to be something wrong here; but, not knowing how to mend it, I give it as it stands in Ware.

servient.

servient. Præterea dono iis & concedo, & præfenti charta confirmo, totum Regnum de Cork, exceptis dicta Civitate & Cantredo prænominato, quæ in manu mea retineo, ipsis & hæredibus suis, * tenenda de me & Johanne filio meo & hæredibus nostris, per rectas devisas, ^{* tenendum.} versus Cap. S. Cerdani, super maritima, & versus Limericum & alias partes, & usque aquam proximam de Lismore, quæ fluit inter Lismore & Cork & descendit in mare, per servitium 60 Militum, inde mihi et Johanni filio meo & hæredibus nostris faciendum; a præfato Roberto & hæredibus suis servitium 30 militum faciendum; & à præfato Milone & hæredibus suis, 30. Quare volo & firmiter præcipio quod prænominati Robertus & Milo custodiam supradictæ Civitatis & Cantredi prædicti habeant & teneant, sicut suprà dictum est. Et quod iidem & hæredes eorum post ipsos, totum regnum prædictum, exceptis supradicta civitate & præfato cantredo, quæ in manu mea retineo, habeant & teneant, de me & Johanne filio meo, & hæredibus nostris, per rectas devisas; sicut suprà determinatum est, benè & in pace, liberè & quietè, integrè, plenariè, & honorificè, in bosco & plano, in pratis & pascuis, in aquis & molendinis, in vivariis & stagnis & piscariis, in viis & semitis, & in omnibus aliis locis & aliis rebus ad illud pertinentibus, cum omnibus libertatibus & liberis consuetudinibus suis: Ita quod à prædicto flumine, quod fluit inter Lismore & Cork, remaneat in manu mea tota terra usque ad Waterford, cum ipsa Civitate de Lismore, ad custodiam de Waterford. Testibus Johanne Norwicensi, Adamo de Sancto Asapho, & Augustino Waterford. Episcopis; Richardo de Lucy, Willelmo filio Aldelmi Dapifero, Hugone de Lacy, Hugone de Burid, Rogero filio Remfye, Mauritio de Prendergast, Roberto Dene, Roberto filio Elioderi, Galfrido Poer, Hervæo de Monte-Marisco. Apud Oxoniam.

This refers
to vol. iii.
p. 344.

No. IV.

Petrus Blesensis, Ep. lxxiii. p. 128.

Ad tres Episcopos Angliæ.

RICHARDUS Dei gratia Cantuar. Archiepiscopus, totius Angliæ Primas, & Apostolicæ Sedis Legatus, Venerabilibus & dilectis fratribus R. Vintoniensi, G. Heliensi, I. Norwicensi Episcopis, salutem & salubre consilium.

In Ecclesia Anglicana damnosa omnibus, & omnino damnanda consuetudo invaluit, quæ, nisi per industriam vestram fuerit omnino sublata de medio, in enormi totius Cleri dispendium vehementer excrescet. Si Judæus aut laicorum vilissimus occiditur, statim supplicio mortis addicitur interfectior: si quis verò sacerdotem vel clericum minoris aut majoris status occiderit, Ecclesia sola excommunicatione contenta, aut, ut verius loquar, contempta, materialis opem gladii non requirit. Scitis equidem, quod à Domino dictum est Moyse, Maleficos non patieris vivere. Et, Apostolo teste, Princeps gladium habet ad vindictam malefactorum, laudem verò bonorum. Sed & Dominus dicit, Qui vos tangit, me tangit. Et per prophetam, Nolite, inquit, tangere Christos meos. Ubi igitur posset maleficium immanius & execrabilius inveniri, quàm grassari in Christos Domini, & in populum acquisitionis, libera impunitatis audacia, gladium exercere? Accepta mihi esset sententia excommunicationis in talibus, si timorem homicidis incuteret. Sed, culpis nostris exigentibus, gladius Petri rubigine obductus est; et quia non potest incidere, datus est in contemptum. Si capra, si ovicula furto sublata sit vel occisa, in hujus rei autorem, si lateat, sententia excommunicationis emittitur: convictus verò aut confessus furcarum patibulo deputatur. Porro clerici vel Episcopi occisores Romam mittuntur, euntesque in deliciis, cum plenitudine Apostolicæ gratiæ, & majore delinquendi audacia revertuntur. *Talium vindictam excessuum Dominus Rex sibi vindicat, sed nos eam nobis dam-nabiliter reservamus,* atque liberam præbentes impunitatis materiam

materiam in fauces nostras laicorum gladios provocamus. Ignominiosum est, quod pro capra vel ovicula gravior, pro sacerdote occiso pœna remissior irrogatur. *Sed bis & durioribus digni sumus, qui jurisdictionem alienam & nobis omnino indebitam ambitione temeraria usurpamus.* Nam & in corpore Decretorum, & in epistola ad Romanos hæc verba legisse meminimus, Sunt quædam enormia flagitia, quæ potius per mundi iudices, quam per retores & iudices Ecclesiarum vindicantur: sicut est, cum quis interficit Pontificem Apostolicum, presbyterum, sive diaconum, hujus reos reges & principes mundi damnant. Omnis equidem justitia ideo exercetur, ut debita quiete gaudeat innocentia, & malignantium temeritas refrenetur. *Veruntamen in hac jurisdictione maledicta, quam ambitiosè & superbè præsumimus, DEUM offendimus, & Dominum Regem, viamque in clericos malignandi tutissimam laicis aperimus.* Nuper apud Vintoniam sacerdos literaturæ commendabilis & conversationis honestæ malitiosè occisus est à Guilielmo Frechet, & uxore ejus; nec illi maleficium diffitentur: prompti sunt ergo curiam adire Romanam: nam confidit in ea cor viri sui, atque in specie & pulchritudine sua intendit prosperè procedere, & de lenocinio uxoris in via, præter absolutionis beneficium, fructus uberioris manipulos reportare. Vos ergò, dilectissimi fratres, huic publicæ pesti, dum in suo cursu est, maturiore consilio studeatis occurrere: nam si liberius aliquantulum & licentius evaserit, periculum quod inter pauperes nunc versatur nostris in proximo cervicibus imminabit. Ecclesia jurisdictionem suam prius exerceat; & si illa non sufficit, ejus imperfectum suppleat gladius sæcularis. Hujus rei auctoritas e Synodo Urbani Papæ, & decreto Gregorii, ex epistola Nicolai ad Episcopos Galliarum, ex Concilio etiam Martini Papæ, & ex Concilio Carthaginen. III. & ex multis Sanctorum Patrum institutionibus emanavit. Nec dicatur, quod aliquis puniatur propter hoc bis in idipsum: nec enim iteratum videtur, quod ab uno incipitur, & ab altero consummatur. Duo sunt gladii, qui mutuum à se mendicant auxilium, atque ad invicem sibi vires impartiuntur alternas, sacerdotium regibus & sacerdotibus regnum. Ideoque si ab altero suppletur alterius insufficientia, non videtur duplex contritio, aut punitio combinata. Nam & illi, qui ad mortis patibulum sunt damnandi, juxta Moguntinense Concilium, antequam ad tormenta ducantur per cordis contritionem & pœnitentiam spiritualiter puniuntur;

untur; nec duplicitatem contritionis inducit, sed quædam præparatio est ad mortem pœnitentia & satisfactio quæ præcedit. *Reddentes igitur Deo quæ Dei sunt, & Cæsari quæ sunt Cæsaris, juxta petitionem Domini Regis, ei tantorum vindictam excessuum relinquamus*: reis autem in mortis articulo constitutis, quia sententiam latæ canonis incurrerunt, si absolutionem postulaverint, & in hoc, & in aliis, quantum possumus, sine scandalo & periculo Ecclesiæ, humanitatis consilium misericorditer impendamus. Publicè namque interest, ut materiali gladio cohibeantur qui nec Deum timeant, nec deferunt Ecclesiæ, nec censuram canonum revereantur. Bene valete.

This refers
to vol. iii.
p. 366, 367.

No. V.

*Benedict. Abb. t. i. p. 365—368. Hoveden, ad ann.
1181.*

Affisa de Armis habend. in Anglia.

QUICUNQUE habet Feodum unius Militis, habeat Loricam & Cassidem, Clypeam & Lanceam: Et omnis Miles habeat tot Loricæ & Cassides, & Clypeos, & Lanceas, quot habuerit Feoda Militum in Dominico suo.

Quicumque Liber Laicus habuerit in Catallo, vel in Redditu, ad valentiam 16 Marcarum, habeat Loricam, & Cassidem, & Clypeum, & Lanceam.

Quicumque Liber Laicus habuerit in Catallo, vel Redditu, decem Marcas; habeat *Halbergellum* et *Capelet Ferri* et Lanceam.

Item, omnes Burgenses et tota Communia Liberorum Hominum habeant *Wambais* & *Capelet Ferri*, et Lanceam.

Unusquisque autem illorum juret, quod infra Festum Sancti Hilarii hæc arma habebit, et Domino Regi Henrico, scilicet Filio Matildis Imperatricis, Fidem portabit; et hæc arma in suo Servitio tenebit secundum Præceptum suum, et ad Fidem Domini Regis & Regni sui. Et nullus, ex quo arma hæc habuerit, ea vendat, nec invadiet, nec præstet, nec aliquo alio modo à se alienet. Nec Dominus suus ea aliquo modo ab Homine suo alienet, nec per foris-

foris factum, nec per donum, nec per vadium, nec aliquo alio modo.

Siquis hæc arma habens obierit, arma sua remaneant hæredi suo. Si vero hæres de tali ætate non sit, quod Armis uti possit, si opus fuerit, ille qui eum habebit in custodia habeat similiter custodiam Armorum, et hominem inveniat, qui Armis uti possit in Servitio Domini Regis, si opus fuerit, donec hæres de tali ætate sit, quod Arma portare possit, et tunc ea habeat.

Quicunque vero Burgenfis plura arma habuerit quam eum habere oportuerit secundum hanc Assisam, ea vendat, vel det, vel sic à se alienet alicui homini, qui ea in Servitio Domini Regis Angliæ retineat. Et nullus eorum plura arma retineat quam eum secundum hanc Assisam habere oportuerit.

Item nullus Judæus Loricam vel Habergellum penes se retineat; sed ea vendat, vel det, vel alio modo à se removeat, ita quod remaneant in servitio Regis.

Item, nullus portet arma extra Angliam, nisi per præceptum Domini Regis; nec aliquis vendat Arma alicui, qui ea portet ab Anglia.

* Item, Justitiæ faciant jurare per Legales Milites, vel per alios Liberos & Legales Homines de Hundredis, & de Visnetis, & de Burgis, quot viderint expedire, quod qui habeant valentiam Catalli secundum quod eum habere oportuerit, Loricam, & galeam, & Lanceam, & Clypeum; secundum quod dictum est: scilicet, quod separatim nominabunt eos omnes de Hundredis suis, & de Visnetis, & de Burgis, qui habebunt sexdecim Marcas, vel in Catallo vel in Redditu: Similiter, & qui habebit decem Marcas. Et Justitiæ postea omnes illos juratores & alios faciant inbrevari, qui quantum Catalli vel Redditus habuerint, et qui secundum Valentiam Catalli vel Redditus, quæ Arma habere debuerit. Et postea coram eis, in communi audientia illorum, faciant legere hanc Assisam de Armis habendis, et eos jurare, quod ea arma habebunt secundum Valentiam prædictam Catallorum vel Redditus; et ea tenebunt in servitio Domini Regis, secundum hanc

* The copy given of this assise by Benedictus Abbas appearing to be very faulty, I have corrected it in several places from that given by Hoveden; but cannot, from either of them, make out a clear sense of the greater part of this clause; it being evident that some words are wanting, to complete and render it intelligible.

APPENDIX TO THE FIFTH BOOK OF

prædictam Assisam, in præcepto & Fide Domini Regis Henrici filii Matildis Imperatricis, & Regni sui.

Si vero contigerit, quod aliquis illorum, qui habere debuerint hæc arma, non sit in Comitatu ad terminum, quando Justiciæ in comitatu illo erunt, Justiciæ ponant ei terminum in alio Comitatu coram eis. Et si in nullo Comitatu, per quos ituræ sunt, ad eos venerit, et non fuerint in Terra ista, ponant ei terminum apud Westminster ad Octavas Sancti Michaelis; quod tunc sit ibi ad faciendum Sacramentum suum, sicut se & omnia sua diligit. Et ei præcipiatur, quod infra festum prædictum Sancti Hilarii habeat arma secundum quod ad eum pertinet habendum.

Item, Justiciæ faciant dici per omnes Comitatus, per quos ituræ sunt, quod qui hæc arma non habuerint, secundum quod prædictum est, Dominus Rex capiet se ad eorum Membra; et nullo modo capiet ab eis Terram vel Catalla.

Item, nullus juret super Legales & Liberos Homines, qui non habeat sexdecim Marcas vel decem Marcas in Catallo.

Item, Justiciæ præcipiant per omnes Comitatus, per quos ituræ sunt, quod nullus, sicut se ipsum & omnia sua diligit, emat vel vendat aliquam Navem, ad ducendum ab Anglia; nec aliquis deferat vel deferri faciat Maireman extra Angliam. Et præcepit rex quod nullus reciperetur ad sacramentum armorum nisi liber homo.

No. VI.

This refers
to vol. iii.

B. 376, 377.

*Extract of a Letter from John of Salisbury, to the
archbishop of Sens, published among Becket's Epis-
tles, lib. v. tom. 2. epist. 91.*

SEDENTE regione blasphemii, qui sub nomine & honore Sacerdotali Sacerdotium persequuntur, principibus adulantes, persecutorum Ecclesiæ justificantes causam, exultantes in rebus pessimis, scilicet quod potestatibus adstiterunt adversus Dominum & adversus Christum ejus, cujus sanguis per eos effusus, militum ministerio, de terra clamat ad Dominum, magis quam sanguis Abel justus, quem frater ipsius interemit. Horum caput est ille Eboracensis, quem vidistis & audistis palam in curia Archiepiscopum persequentem, & qui indignus fuerat ore sacri-lego, quo necem Martyris procuravit, ipsius proferre nomen. Eum plane mendosus & mendax jam inauditis coruscantem miraculis; adhuc, sicut ex literis ejus patet, nominat Pharaonem*. Sed non movemur, si flagitiosa bellua Martyrem non honorat, quæ, sicut opera manifestata convincunt, Deum utique non veretur. Dicitur ta-

* This alludes to a letter from the archbishop of York to the bishop of Durham and all the chapter of York, in which he complained very grievously of having been attacked in the court of Rome by the agents of Becket with the most venomous calumnies and lies, to hinder the pope from taking off the sentence of suspension, which his Holiness had laid on him at their instigation. "Et quidem primo paraverant laqueum suspensionis, quo dominus Papa, plus eorum suggestiones quam juris ordinem secutus me in-
" nudaverat: deinde ne quoquo modo solvi posset, iniquitatem iniquitati ad-
" dentes hinc maximorum virorum libellos (sicut jam a pluribus retro annis
" instructi fuerant) conquirebant, inde peregrinorum et qui me nunquam vide-
" rant multitudinem subernabant, ut ea quæ non noverant mentientes, apud sum-
" mum Pontificem et curiam Romanam quocunque modo famam onerarent. Ab-
" sens eram, et qui ex parte mea in Curia pauci tantæ multitudini vix re-
" sistere poterant tam exquisitis pressis mendaciis; maximè cum quidam, sole
" habitu religiosi, videntes eos prosperare in iniquitatibus suis, cum illis cur-
" rebant, et, neglecto Dei timore, ad eversionem dignitatis Ecclesiæ nostræ,
" usq. cum meretricibus suis, ne quis sexus persecutioni meæ deesset, multa
" dixerunt." He afterwards gives to their chief (whom John of Salisbury here declares to be Becket) the name of Pharaos; but ends with saying, that truth had dispelled all these lies, and procured him absolution. This letter was written a little before Becket's murder, and stands the 288th in the collection of John of Salisbury's letters, among which there are several not composed by him, but of which he had copies.

men quod parat ad curiam proficisci, ut purget vitæ fœdæ notam, quasi homo qui iustitiam fecerit, & non deliquerit iudicium Dei sui. Et, ne ipsius purgatio valeat impediri, procuravit ut nulli nostratum liceat transfretare, nisi Domini Regis impetrata licentia. Quod quidem obtineri non potest, nisi præstetur cautio, quod nihil quæretur contra Martyris persecutores. Quid ergo facient miseri, zelantes legem, videntes iustitiam opprimi, & sibi exitum denegari. Sed certe verbum Dei non est alligatum, & vobis libertas est, & os patens ad Ecclesiam Romanam, & notissima veritas. Novistis enim Martyrem in vita sua, novistis causam ejus, novistis & istum Caipham temporis nostri, qui sub specie conquerentis persuadebat expedire, ut unus moreretur aut caperetur, ne tota gens periret. Eratis in Anglia cum patruo vestro Domino Vintoniensi, quando idem nunc Caiphæ, tunc Archidia-bolus, Walterum illum, cujus adolescentis admodum venusta facie inductus nefario concubitu nimis consueverat delectari, hispidum & procaciori lingua evomentem probra, quæ in contumeliam naturæ perpeßus fuerat, oculis orbari fecit. Et postmodum scelus arguentem idem Archidia-bolus, iudicibus qui sæcularia negotia exercebant corruptis, adegit suspendio. Sic vir ille, non minus benignus quam pudicus, columbi sui accepit affectum. Sic veteris Amasii diu exhibitum obsequium remuneravit, ut primo stuprum inferret misero, deinde miseriori, quia de consensu tam fœdæ immunditiæ pœnitebat, capulationem & oculorum avulsionem infigeret; & tandem miserrimum, quia clamore, ut poterat, suas protestabatur angustias, suspensum in patibulo fecit jugulari. Hæc non fingimus, sed in vestram studemus revocare memoriam, si tamen excidere potuerunt, quæ velut unguæ adamantino, multis & magnis, & plenis fide viris sæpius referentibus, in pectore nostro profundius resederunt. Nam usque in hodiernum diem in opprobrium Ecclesiæ, Deique contemptum, tristis hæc historia cantitatur. Sed fortasse quæret aliquis, quomodo tantum flagitium, & tam manifestum, impune pertulerit, præsertim beato Eugenio tunc summum administrante pontificatum. Et quidem, ut indubitanter credimus, nullo modo evasisset, nisi per beati Thomæ industriam, qui per venerabiles viros Hilarium Ciceriensem & Johannem Vintoniensem Episcopos effecit, ut ejus a bonæ memoriæ Theobaldo Cantuariensi Archiepiscopo purgatio reciperetur. Deinde sentiens Ecclesiam

clesiam Romanam indignatam esse super exhibitione purificationis factæ clam, utpote in capitulo Monachorum, non in solemni conventu præstitæ, statui suo consulens, Romam profectus est ad illum famosissimum negotiatorem, quem semper odio habuit anima vestra, Gregorium Sancti Angeli Cardinalem. Et per illum, in multitudine sparsorum in curia munerum, obtinuit, ut justificatus rediret in domum suam: incertum qua Dei dispensatione reservatus ad majora flagitia perpetranda, sicut præfens testatur dies, quo sanguine innocentis purpuratur ecclesia, *qui sceleratum istum, eo quod concurialis ejus erat, fraterna charitate compatiens, & frugem vitæ melioris expectans, debite subtraxit ultioni.*

No. VII.

This refers
to vol. ii.
p. 413.

From Benedict. Abb. t. ii. p. 417, 418, 419.

EODEM anno, post obitum Tomæ filii Bernardi, qui post discessum Alani de Nevill, fuit Magister Forestarius & Justitiarius per totam Angliam, Dominus Rex divisit Forestas suas in Anglia in plures partes, et unicuique parti præfecit quatuor Justiciarios, scilicet duos Clericos & duos Milites. Et constituit in unaquaque parte duos Servientes de Domo et Familia ipsius, Custodes Venationis & Viridis super omnes Forestarios alios, tam Regis quam Baronum & Militum. Et postea fecit prædictos Justiciarios & Servientes jurare, tactis Sacro-sanctis Evangelii, quod subscriptas Assisas de Foresta servarent.

Assisæ de Foresta.

- “ Prima Assisa Henricis Regis. Primùm, defendit, quod
- “ nullus ei foris-faciat de Venatione sua; nec de Forestis
- “ in ulla re; et ne confidant quod habeant Misericordiam
- “ de illis propter Catalla sua, sicut usque huc. Nam si
- “ quis ei amodo foris-fecerit, et ratione convictus fuerit,
- “ plenam vult de eo Justitiam fieri, qualis fuit facta tem-
- “ pore Henrici, avi sui, ut amittat Oculos & Testicu-
- “ los.
- “ Item, defendit, quod nullus habeat Arcus, neque
- “ Canes, neque Leporarios, in Foresta sua, nisi habeat

VOL. IV.

E e

“ ipsum

“ ipsum Regem ad Warantum; vel aliquem, qui warrantizare possit.

“ Item, quod nullus vendat vel donet ad vastum vel destructionem Bosci sui, qui sit in Foresta Regis; sed bene concedit, quod Comites & Barones, et in Franco tenentes, capiant de Boscis eorum quod necesse fuerit sine Wasto; et hoc per Visum Forestarii Regia.

“ Item, præcepit Rex, quod sui Forestarii capiant curam de Forestariis Militum & aliorum qui habent Boscos in Forestis suis; et quod Bosci non destruantur. Nam sciant bene illi, quorum Bosci fuerint destructi, quod de ipsis, vel de illorum Terris, capiatur Emendatio, et non de alio.

“ Item, quod Forestarii sui jurent, quod secundum omne posse suum tenebunt istam Assisam de Forestis suis; et quod non vexabunt Milites, neque alios probos Homines, de hoc quod Rex concedit eis de Forestis suis.”

This refers
to vol. iii.
p. 495, 496.

No. VIII.

From Diceto Imag. Hist. p. 636, 637, 638.

VENERABILI & excellentissimo Principi Frederico Dei gratia Romanorum Imperatori semper Augusto, Henricus eadem gratia Rex Angliæ, Dux Normanniæ & Aquitaniæ, & Comes Andegaviæ, in eo regnare per quem reges regnant.

Quoniam imperatoriam Majestatem super his congratulari confidimus, quæ ad honorem Dei & exaltationem ecclesiæ disponuntur, Excellentie vestræ notum facimus, nos & karissimum nobis in Christo amicum Philippum regem Francorum, & multos procures utriusque regni, cum magna armatorum multitudine, crucem ad servitium Dei assumpsisse, hoc præcipue intendentes, ut, Deo duce, terra sancta nostræ humilitatis adminiculo ab his oppressoribus releveretur, quibus hodie ad opprobrium Christiani nominis dinoscitur miserabiliter prægravari. Et quoniam in præposito habemus per terras imperii vestri transire, rogamus vos tanquam Christianissimum principem, quatenus securum transitum nobis, & iis qui nobiscum votum simile obtulerunt, in terras vestræ potestati subiectis præbeat,

beatia, & mercatum victualium, locis competentibus, in occursum nostrum convenire faciatis, ad honorem Dei & vestrum & totius imperii securitatem. Quid autem super hoc vestræ placuerit Majestati *, per fidelem & familiarem clericum nostrum Ricardum Barre, Lexoviensem archidiaconum, quem ob hanc causam ad vestram destinavimus præsentiam, vestra nobis significare velit dignatio.

Fredericus Dei gratia Romanorum imperator semper Augustus karissimo fratri Henrici illustri regi Angliæ salutem & dilectionem.

Noveris laudabile propositum tuum quod te suscepisse suggeris, ad servitium Dei faciendum, nobis plurimum complacere; unde ad illud servitium perficiendum tibi consilium & auxilium in Christi nomine promittimus, forumque victualium tibi & illis qui tecum ad Dei honorem militabunt prompta voluntate & prono desiderio, Deo cooperante, secundum petitionem tuam, providebimus, maxime autem in societate karissimi amici nostri Philippi regis Francorum, & ea durante gratia qua nos invicem intelligimus associatos.

Glorioso & potentissimo Principi † Cursac Angelo Dei † Isaac. gratia Romanorum Imperatori semper Augusto, a Deo coronato, Henricus eadem gratia Rex Angliæ, Dux Normanniæ & Aquitaniæ, & Comes Andegaviæ, gaudium & gloriam cum salute sempiterna.

Quoniam imperii vestri potentiam amplissimam ad defensionem fidei catholicæ, & ad honorem Christiani nominis credimus & confidimus specialiter & laudabiliter invigilare, non immerito Gloriæ vestræ ea significanda duximus, quæ ad sacrosanctæ ecclesiæ honorem & exaltationem divina providentia, in regno nostro, & in regno karissimi nobis Philippi illustris regis Francorum, voluit operari. Imperatoriæ itaque notificamus Majestati, nos & prænominatum illustrem regem Francorum, procereſque utriusque regni, cum innumera bellatorum multitu-

* The title *Your Majesty* (*Vestra Majestas*) was not usually given to any king in that age, but only to Emperors, and, in some letters from ecclesiasticks, to *their Emperor* the Pope. Geoffry, bishop of Lincoln, in a letter to the archbishop of Canterbury, says, "Placuit *Majestati Apostolicæ* vestræ iungere *sublimitati*, ut me, &c." See Hoveden ad ann. 1181. But by these letters we find that the titles of *Your Excellency* (*Excellentia vestra*) *Your Highness* (*Sublimitas vestra*) *Your Glory* (*Gloria vestra*) and *Your Eminence* (*Eminentia vestra*) were also given to Emperors together with that of *Your Majesty*.

dine, signaculum crucis suscepisse, & propositum firmasse, ut omnipotenti Deo serviemus ad confusionem inimicorum sanctæ crucis in sancta terra Jerusalem, ut nostræ humilitatis interventu terra illa, diminutâ Paganorum spuiticiâ, pristinum decorum & debitum splendorem, Deo annuente, recipiat. Quod quoniam in omni nostro proposito, & maxime in famulatu Dei omnipotentis, Excellentiæ vestræ consilio præmuniri volumus & juvari, attentius exoramus quatenus oculos Majestatis vestræ ad nos & ad principes, & ad alios qui Deo duce nobiscum militabunt, reducat, nobisque Sublimitas vestra securum & quietum transitum, & victualium copiosum mercatum in terris et provinciis nobilissimo imperio subjacentibus, liberaliter & benigne provideat, ad honorem Dei omnipotentis, & gloriam vestri nominis, & ad imperii securitatem, quam de pacifico ingressu nostro & de transitu innocuo præstare parati sumus, prout Ricardus Barre Lexoviensis archidiaconus, clericus noster fidelis & familiaris, Eminentiae vestræ ex parte nostra plenius exponet.

Curia Isaac (Angelus) Dei gratia Romanorum Imperator semper Augustus, a Deo coronatus, Henrico eadem gratia regi Angliæ, Duci Normanniæ & Aquitaniæ, & Comiti Andegaviæ, salutem & benevolentiam.

Rogavit *nobilitas tua*, ut nostri imperii consilium & auxilium habeat in servitio Dei omnipotentis contra Saracenos, & ut securum haberes transitum cum exercitu tuo, et sufficientem mercatum victualium, per loca imperii transiturus. Ad quod respondemus: Propositum tuum bene placitum est Deo et imperio nostro, quoniam laudabile est, & quod omnes Christiani laudare debent, & adjuvare. Ideoque prudentiæ tuæ & * probitati gratulantes, tibi & his qui in comitatu tuo venturi sunt securum transitum & copiosum concedimus mercatum, secundum formam literis tuis insertam, unde ad præsentiam tuam mittimus Constantinum & Nicholaum ministros sacri palatii, ut tecum tractent de securitate & forma pacis servandæ imperio, et, si eam præstiteris securitatis formam quam ipsi portant, centies milies benè veneris, sicut alter dominus & socius imperii, et tu cum toto comitatu tuo fideliter consilio imperii instructus eris qualiter insidias

* *Probitas* here signifies Valour, as it commonly does in the Latin of that age, being used as synonymous to *Virtus*.

Turcorum debeas declinare, & quâ cautelâ eas possis invadere & expugnare *.

* It appears from the Life of Saladin, often quoted in this volume, that, when this letter was written, this emperor (Isaac Angelus) was in close confederacy with that prince.

No. IX.

This refers
to vol. III.

p. 424.

From Rymer's *Fœdera*, p. 57.

*Hoc est Testamentum illustrissimi Regis Henrici Secundi
Angliæ.*

I. **H**ENRICUS, Dei gratia, Rex Angliæ, Dux
Normanniæ & Aquitaniæ, Comes Andegaviæ,
Henrico Regi, & Ricardo, & Galfrido, & Johanni Filiis
suis; Archiepiscopis, Episcopis, Abbatibus, Archidiaconis,
Decanis, Comitibus, Baronibus, Jusficiariis, Vice-
comitibus, Ministris, & omnibus Hominibus & Fidelibus
suis, tam Clericis, quam Laicis, totius Terræ suæ citra-
mare & ultra, salutem. Notum vobis facio quod apud
Waltham, præsentibus Episcopis,

R. Wintonensi, &

J. Norwicensi, &

G. Cancellario Filio meo, &

Magistro Waltero de Constantiis Archi-
diaconis Oxon. &

Godefrido de Luci, Archidiacono de Der-
bi, &

Ranulfo de Glanvilla, &

Rogero Filio Reimfridi, &

Hugone de Morewic, &

Radulfo Filio Stephani Camerario, &

Willielmo Rufo.

feci divisam meam de quadam parte pecuniæ meæ in hunc
modum.

2. Domui Militiæ Templi Jerusalem 5000 Marcas Ar-
genti; Domui Hospitali Jerusalem 5000 Marcas Argenti;
& ad communem defensionem Terræ Ierosolimitanæ
5000 Marcas Argenti, per manum Magistrorum Templi
& Hospitalis Jerusalem, & visum eorundem habendas,
præter

APPENDIX TO THE FIFTH BOOK OF

præter pecuniam illam, quam prius prædictis domibus Templi & Hospitalis commiseram custodiendam; quam similiter dono ad defensionem ipsius Terræ Ierosolomitane, nisi eam in vita mea repetere voluero.

3. Et aliis domibus Religiosis totius Ierosolimæ & Leprosis, & Inclusis, & Heremitis ejusdem Terræ, 5000 Marcas Argenti, dividendas per manum Patriarchæ Jerusalem, & visum Episcoporum Terræ Ierosolimæ, & Magistrorum Templi & Hospitalis.

4. Domibus Religiosis Angliæ, Monachorum, Canonorum, Sanctimonialium, & Leprosis, & Inclusis, & Heremitis ipsius Terræ, 5000 Marcas Argenti, dividendas per manum & visum

R. Archiepiscopi Cantuar. &

R. Winton. &

R. Wigorn. &

G. Elyen. &

J. Norwic. Episcoporum, &

Ranulf de Glanvilla Justiciarii Angliæ.

5. Domibus Religiosis Normanniæ, Monachorum, Canonorum, Sanctimonialium, & Inclusis, & Heremitis ejusdem Terræ, 3000 Marcas Argenti, dividendas per manum & visum

Archiepiscopi Rothomagensis, &

Baiocensis, &

Abrincensis, &

Sagiensis, &

Eboracensis Episcoporum.

6. Domibus Leproforum ipsius Terræ, 300 Marcas Argenti per manum & visum prædictorum dividendas.

7. Monialibus Moretoniæ 100 Marcas Argenti.

8. Monialibus de Viliers extra Faleisiam 100 Marcas Argenti.

9. Domibus Religiosis Terræ Comitum Andegaviæ Patris mei (exceptis Sanctimonialibus de ordine Fontis Ebraldi) mille Marcas Argenti, per manus Episcoporum Cenomanensis & Andegavensis dividendas; ipsis autem Sanctimonialibus Fontis Ebraldi, & Domibus ipsius ordinis, 2000 Marcas Argenti, dividendas per manum & visum Abbatisse Fontis Ebraldi*.

* This great legacy was given to this convent by Henry, because he intended to be buried in their church.

10. San&imonialibus Sancti Sulpitii Britanniae *, 100
 Marcas Argenti.

* *Britanniae*
 here means
 Bretagne.

11. Domui & toti Ordini Grandis Montis 3000 Marcas
 Argenti.

12. Domui & toti Ordini de Chartusa, 2000 Marcas
 Argenti.

13. Domui Cistercii et omnibus Domibus ipsius Ordinis
 (exceptis Domibus ejusdem Ordinis quæ in Terra mea
 sunt, quibus divisam meam feci) 2000 Marcas Argenti,
 dividendas per visum & manum Abbatis Cistercii & Clare-
 vallis.

14. Domui Cluniaci 1000 Marcas Argenti, præter hoc
 quod eidem Domui accommodavi, quod ei per dono, nisi
 in vita mea repetere voluero.

15. Domui Majoris Monasterii per dono 1000 Marcas
 Argenti quas ei commodavi, nisi eas in vita mea repetere
 voluero.

16. San&imonialibus de Maitilli † 100 Marcas Ar-
 genti.

† *Marelli*.
 See Gervase
 vol. 1460.

17. Domui de Præmaritato § & toti Ordini (exceptis
 Domibus ejusdem Ordinis quæ in Terra mea sunt) 200
 Marcas Argenti.

§ *Præmar-
 itato*.

18. Domui de Arroais & toti Ordini (exceptis Domibus
 ejusdem Ordinis Terræ meæ) 100 Marcas Argenti.

19. Ad maritandas pauperes & liberas Fœminas Angliæ,
 quæ carent auxilio, 300 Marcas Auri, dividendas per ma-
 num & visum

R. Wintoniensis, &
 B. Wigorn. &
 G. Elyensis, &
 J. Norwicens. Episcoporum, &
 Ranulfi de Glanvilla.

20. Ad maritandas pauperes & liberas Fœminas Nor-
 manniæ, quæ carent auxilio, 100 Marcas Auri, dividen-
 das per manum & visum

Rothomagensis Archiepiscopi, &
 Abrincensis, &
 Sagienfis, &
 Ebroicensis Episcoporum.

21. Ad maritandas pauperes & liberas Fœminas de
 Terra Comitum Andegaviæ Patris mei 100 Marcas Auri
 per manum & visum

Cenomanensis & Andegavensis
 Episcoporum dividendas.

22. Hanc

22. Hanc autem divisa[m] feci in prædicto loco, Anno incarnationis Domini MCLXXXII. Quam vobis, Filiis meis, per fidem quam mihi debetis, & sacramentum quod mihi jurastis, præcipio ut s[er]viter & inviolabiliter teneri facietis, & quod super eos, qui ipsam fecerint, manum non apponatis : & quicumque contra hoc venire præsumserit, indignationem & iram omnipotentis Dei, et maledictionem ipsius Dei et meam incurrat.

23. Vobis etiam Archiepiscopis & Episcopis mando, ut, per sacramentum, quod mihi fecistis, et fidem quam Deo et mihi debetis, in synodis vestris, solemniter accensis candelis, excommunicetis, excommunicari faciatis, omnes illos qui hanc divisa[m] meam infringere præsumserint ; & sciatis quod dominus Papa hanc divisa[m] meam scripto & sigillo suo confirmavit sub interminatione Anathematis.

This refers
to vol. ii.
p. 499.

No. VIII

From Gervase's Chronicle, col. 1503.

R. De Glanyilla Abbat[is] de Bello Salutem. Præcipio tibi ex parte Domini Regis per fidem quam ei debes, et per Sacramentum quod ei fecisti, ut nullo modo procedas in causâ quæ vertitur inter monachos Cantuarienses et Dominum Cantuariensem Archiepiscopum, donec inde mecum locutus fueris. Teste Willielmo de Glanvillâ per præceptum Domini Regis de ultra mare. Et, omni dilatione et occasione remota, sis ad me apud Londoniam, proximo die Sabbati post festum Sanctæ Margaritæ Virginis, mecum inde locuturus. Teste eodem apud Westmonasterium.

•• Whether other writs of the like nature were sent to the abbots of Feversham and St. Augustin's, who were joined by the pope in commission with the abbot of Battel, or whether it was deemed sufficient to send this to him as the chief of the three, and, perhaps, the only one willing to exercise his authority, I do not find.

I have not swelled this Appendix with the proceedings in the cause between the kings of Castile and Navarre ; because they are to be found, not only in Rymer, but likewise in almost all the histories of those times, and are of no such importance to the affairs of this kingdom, as to require the particular inspection of the reader in the original words of the record. Neither will I add here (as I once intended to do) any remarks on the general assemblies

assemblies or councils of the French nation under the first and second races of their kings; because I find it fully done by that excellent writer, Dr. W. Robertson, in the first volume of his History of the Emperor Charles V. (see Proofs and Illustrations, note xxxvii. from p. 355 to 365 inclusively.) Nor will I say more to prove, that the book ascribed to Glanville was not copied from the *Regiam Majestatem* of the Scotch; as that subject, since I published the former part of this work, has been learnedly and ably discussed by Sir David Dalrymple. (See an Examination of some of the arguments for the High Antiquity of *Regiam Majestatem*.)

Benedict abbot of Peterborough, and, after him, Hoveden, mention a statute made abroad by King Henry the Second, in the year 1177, to this effect: "Na quis pro debito Domini res hominis capere præsumat, nisi homo ejusdem debiti debitor aut plegius exiterat: sed redditus quos homines reddere debent Dominis suis, reddantur creditori Dominorum suorum, et non Dominis. Cæteræ vero res hominum propriæ sint in pace, neque eas pro Dominorum debitis liceat cuique tradere." To which both writers add, "Hoc statutum et consuetudinem statuit Dominus Rex, et teneat præcepit in omnibus villis suis, et ubique in potestate sua, scilicet in Normanniâ, et Aquitaniâ, et Andegaviâ, et Britanniâ, generale et ratum." Sir H. Spelman, in his *Codex Legum Veterum statutorum Regni Angliæ*, gives this statute with these words, "Hoc statutum, sigillo suo roboratum, rex præcepit per omnes ditiones suas *transmarinas* custodiri." Quere, an *per cismarinas*. And he had good cause for this doubt, as the words of both historians determine the extent and operation of the law to Henry's dominions beyond sea, *scilicet in Normanniâ, et Aquitaniâ, et Andegaviâ, et Britanniâ*. Here is no mention of England; for *Britanniâ* means Bretagne (or Britany) in the writers of that age. Thus the abbot of Peterborough says a little before, "Et cum applicuisset (rex) misit Gaufridum filium suum in *Britanniam*, ad debellandos inimicos suos *Britannie*." This passage therefore does not contain any proof (as some modern writers suppose) that the English were bound in that age by statutes made abroad, to which the parliament of England had not consented.

No. IX.

THAT the account of the times treated of in this work may be rendered more complete, some events appertaining to natural history during that period, viz. from the death of Edward the Confessor to that of Henry the Second, are given here, in the words of the ancient English historians, by whom they are related.

Florentius Wigorniensis, ad ann. 1066.

Eodem anno cal. Maii stella Cometes, non solum in Angliâ, sed etiam ut fertur, per totam mundum visa, per septem dies splendore nimio fulgebat.

Chronicon Johannis Brompton, ad ann. 1074.

His diebus, in confinio Normanniæ et Britanniæ, natus quædam erat, quæ duo capita, quatuor manus, et omnia usque ad umbilicum habebat dupla, inferius vero simpla. Ridebat, comedebat, et loquebatur pars una; fiebat, esuriebat, et tacebat pars altera. Postremo, una defunctâ, altera fere triennio (*triduo*) supervixit; donec præ mole ponderis, et putredine, et fœtore mortui corporis, ipsa defeceret*.

M. Westmon. Florilegus says, "Anno gratiæ 1076 sexto kal. Aprilis terra tremuit, et factus est generalis terræ motus in Angliâ, et gelu magnum, glaciæque validissima a kal. Novembris usque ad medium Aprilis.

Anno gratiæ 1181 factus est terræ motus, cum terræ mugitu terribili in totâ Angliâ, contra ejus solitum cursum naturæ.

* The Philosophical Transactions for the year 1757, vol. L. p. 311, et sequent. give an account of a conjunction, somewhat similar to this, of two Hungarian sisters. But these were only joined at the bottom of their backs, and had each of them two legs; whereas these, below the navel, made only one body, according to the writer here cited. The Hungarian sisters died in their two and twentieth year, at the same instant of time. How long *these* lived, we are not told; but it is said that one of them outlived the other *three days* (for I take the word *triennio* to be an error of the press, or of the MSS. and the true reading to be *triduo*.) The circumstance of the one eating, and laughing, and speaking, while the other wept, or was silent, or fasted, (which shews two distinct wills and powers of action) is the same in both relations.

Willielmi Malmesburiensis de Willielmo I^o, l. iii. ad ann. 1087, 1088.

Præterea anno antequam moreretur proximo, mortalitas hominum et jumentorum, vis tempestatum frequens, violentia fulgurum quantam nemo viderat, nemo audierat. Illo quoque anno, quo obiit, promiscua febris plusquam dimidiam partem plebis depasta, adeo ut plures incommoditas morbi extingueret; deinde pro intemperie aeris fames subsequuta vulgo irrepfit, et quod febribus erat reliquum, ipsa corripere.

Ibidem de Willielmo II^o, ann. D. 1089:

Secundo anno regni ejus terræ motus ingens totam Angliam exterruit; tertio idus Augusti, horrendo miraculo, ut ædificiæ omnia eminus resilirent, et mox pristino more residerent. Secuta est inopia omnium fructuum; tarda maturitas frugum, ut vix ad festum Sancti Andreæ messes reconderentur.

The same earthquake is mentioned by Florence of Worcester, and Simeon of Durham, in these words, "Eodem anno, tertio idus Augusti, Sabbato, circa horam diei tertiam, terræ motus permagnus extitit per Angliam."

Simeonis Dunelmensis Historia, col. 217. ad ann. 1091.

XVI. kalend. Novembris feria vi turbo veniens ab Affrico pervallidus Londoniæ plusquam sexcentas domos et ecclesias quamplures concubienda diverberavit. In ecclesiam quoque Sanctæ Mariæ, quæ dicitur *ad arcum*, irruens, in eâ duos homines occidit, et tectum cum tignis in altum levans, et huc illucque diu per aëra ferens, tandem sex de tignis, eo ordine quo tecto prius infixæ erant, tam altè in terram defixit, ut de quibusdam eorum septima, de quibusdam vero octava pars appareret. Erant enim 27 vel 28 pedum longitudinis.

The account given of the violence of this storm or hurricane by W. of Malmesbury is much the same. Instead of *diverberavit* he uses the word *effregit*, but afterwards adds, *Cumulabantur ecclesiæ cum domibus, maceriæ cum parietibus*, which seems to imply that many houses and churches were, not only shattered, but blown down. He only differs from the other historian above-cited in mentioning four beams instead of six, as driven into the earth from the roof of the church of St. Mary le Bow, making them but six and twenty feet long, instead of twenty-seven

or twenty-eight. His words are these: "*Quatuor enim tigna, sex et viginti pedes longa, tantâ vi in bimum impacta sunt, ut vix quatuor pedes extarent. Notabile visu quomodo strata publica duritiem perruerint, eo ibi ordine posita, quo in testâ manu artificis fuerant locata, quoad, ob impedimenta transeuntium, ad planitiem terræ sunt defecta, quod aliter erui nequirent.*" The astonishing part of both these relations is the mighty force of the wind in driving beams so far into the earth, which, however, is not incredible. But what is said by both authors of the order in which they were placed is to be considered as a mere addition of fancy, to make the wonder seem greater.

Willielmi Malmesburienfis de Willielmo Secundo, l. iiii.
ad ann. 1097.

Kalendas Octobris apparuit Cometes, quindecim diebus, majorem crinem emittens ad Orientem, minorem versus Euro-astrum.

Sim. Dunelm. Hist. ad ann. 1099.

Tertio non. Novembris mare litus egrediur, et villas et homines quamplures, boves et oves innumeras demersit.

Florentius Wigorniensis ad ann. 1106.

In primâ autem septimanâ Quadragesimæ, sextâ feriâ, 14 kal. Martii, in vespera, offensa est quædam insolita stella, et per 25 dies, eodem modo eâdemque horâ, visa est lucere inter Austrum et Occidentem. Parva enim visa est et obscura; sed splendor qui de eâ exivit valde erat clarus, et, quasi ingens trabes, de orientali et aquilonari parte, claritas ingessit se in eandem stellam.

Ibidem, ad ann. 1109.

Stella Cometa mense Decemb. visa est circa Laetæum Circulum, crinem in Australem cœli plagam dirigens.

H. Huntingdonensis Hist. ad ann. 1109.

Hoc in anno apparuit Cometa quidam more insolito. Cum namque ab Oriente insurgens in firmamentum ascendisset, regredi videbatur.

Sim.

Sim. Dunelm. ad ann. 1110.

Terræ motus * Scrobbeſbiria factus est maximus. Flu- • Shrews-
vius qui Trenta dicitur, apud Nottingham, à mane usque bury.
ad horam diei tertiam, spatio unius milliarii exsiccatus est,
ita ut homines sicco vestigio per alveum incederent. Stella
Cometa sexto idus Julii apparuit, et per tres hebdomadas
lucere est visa.

Ibidem, ad ann. 1114.

Fluvius Medeweage vocatus, per nonnulla milliaria, 6
idus Octobris, ita à se defecit, ut in medio alveo sui etiam
parvissimæ naves ob penuriam aquæ elabi aliquatenus mi-
nimè possent. Thamēsis nihilominus eodem illo die de-
fectui patuit. Nam inter pontem et regiam turrim, sub
ponte etiam, in tantum fluminis ipsius aqua diminuta est,
ut non solum equi, sed et innumera hominum et puerorum
multitudo, illud pedibus transvaderet, aqua vix genua eo-
rum attingente. Duravit hic aquæ defectus à medio noc-
tis præcedentis usque in profundas tenebras noctis subse-
quentis. Similem quoque aquarum defectum ipso die a-
pud † Gernemutham, et in aliis locis per Angliam certo † Yarmouth.
relatu contigisse didicimus.

Ibidem, ad ann. 1115.

Hoc anno hyems exstitit asperrima, ita ut omnes serè
per Angliam pontes glaciè frangerentur.

H. Huntingdon, ad ann. 1115.

Cometa ingens in fine Maii apparuit.

Ibidem, ad ann. 1117.

Tonitrua vero et grandines in kalendis Decembris affu-
erunt, et in eodem mense cælum rubens, quasi arderet,
apparuit. Eodem autem tempore maximus terræ motus
in Longobardiâ ecclesias, turres, et domos, et homines pro-
volvens destruxit.

Roger de Hoveden describing the same earthquake, says,
ann. 1117.

Apud Longobardiam magno tertæ motu factò, et (ut
testati sunt qui novere) quadraginta dierum spatio durante,
plurima domorum ædificia corruerunt; et (quod visu dic-
tuque

APPENDIX TO THE FIFTH BOOK OF

tuque constat mirabile) villa quodam prograndis mota est repente de statu proprio, jamque ab omnibus in loco longe remoto consistere cernitur.

Ibidem, ad ann. 1119.

Terræ motus magnus in pluribus locis per Angliam factus est quarto kalend. Octobris circa horam diei tertiam.

W. Malmesburienſis Hiſt. Novellæ, l. i.

Anno 31 regni Henrici Primi infeſta lues ebeneſticorum animalium totam pervagata eſt Angliam. Plene porcorum hæc ſubito vacabantur : integre bove præſepia repente deſtituebantur. Duravit ſequentibus annis eadem peſtis, ut nulla omnino totius regni villa hujus miſeriam immunis alterius incommoda ridere poſſet.

In the 33d year of that King (A. D. 1133) the ſame author, after mentioning an eclipse of the ſun, which happened two days before, ſays, “ Et feriâ ſextâ proximâ, primo mane, tantus terræ motus fuit, ut penitus ſubſidere videretur, horrifco ſono ſub terris ante audio. Vidi ego et in eclipsi ſtellas circa ſolem, et in terræ motu parietem domûs, in quâ ſedebam, bifario impetu elevatum, tertio reſediſſe.”

Ad. ann.
1133.

The Continuator of Florence of Worcester, ſpeaking of the eclipse mentioned by William of Malmesbury, ſays, “ Eodem etiam die (quatuor nonas Auguſti) et eadem hora, ſtellæ plurimæ apparuere. Nec non die eodem, cum naves ad prædicti regis tranſitum paratæ, in littore anchoris firmarentur, mari pacatiſſimo, ventoque permodico exiſtente, cujuſdam navis magnæ anchoræ à terrâ, quaſi vi aliquâ, ſubito avulſæ ſunt, navisque commota, multis mirantibus, eamque tenere nitentibus, nec valentibus, ſibi proximam navem commovit ; et ſic octo naves vi ignotâ commotæ ſunt, ut nulla illarum illæſa remaniſſet. Sextâ autem feriâ ejusdem ſeptimanæ, ſcilicet, 2 nonas ejusdem menſis, ſummo mane, in pluribus Angliæ partibus terræ motus factus eſt magnus.” In this account the moſt remarkable circumſtance is the great ſhip's being driven from its anchors in the port, without any wind or ſwell in the ſea, and moving ſeven others that were alſo anchored nigh to it, by ſome unknown

known force, which certainly must have been the first shock of the earthquake, that two days afterwards was felt at land, in different parts of England.

He also mentions a comet which appeared in the year 1132 :

“ *Stella Cometæ 8 idus Octobris fere per septem dies apparuit.*”

Continuatio ad Florentium Wigornensem, ann. 1141.

His diebus horrendum quid in Wigornensi contigit discessi, quod relatu dignum judicavimus. Siquidem quartâ feriâ ante octavam Ascensionis Dominicæ, circâ nonam diei horam, apud Villam quæ Walsburna dicitur, distans ab Hamtoniâ, Episcopi Wigornensis villâ, milliario uno, ventus turbinis vehemens exortus est, et caligo teterrima, pertingens a terrâ usque ad cælum, et concutiens domum Presbyteri, cui nomen Leouredus, et officinas ejus omnes solo tenus prostravit, et minutatim confregit ; tectum quoque Ecclesiæ abstulit, et ultra Avenam flumen projecit, domus etiam rusticorum fere 50 simili modo dejiciens inutiles reddidit. Grandis quoque ad magnitudinem ovi columbini cecidit, cujus ictibus percussa quedam fœmina occubuit.

Simeon Dunelm. Hist. continuata per Johana. Prior. Hagustald. anno 1142.

Auditus autem fuerat ter terræ motus in eadem urbe (Lincolnâ) infra natale Domini.

Gervasius Dorobern. apud Decem Scriptores, ann. 1158.

Eodem anno terræ motus factus est in pluribus locis per Angliam, et fluvius Thamisiæ apud Londinum desiccatus est, ut siccis pedibus transiretur.

Ibidem.

Anno 1165, mense Januario, terræ motus magnus factus est in Angliâ, nocte mediâ Conversionis S. Pauli Apotoli.

Hoveden,

APPENDIX TO THE FIFTH BOOK OF

Hoveden, ann. 1165.

Eodem anno duo Cometæ apparuerunt ante solis ortum, una ad Austrum, altera ad Aquilonem.

Gervaf. Dorobern. ann. 1173.

Idus Februarii apparuit in cœlo signum mirabile, nocte plusquam mediâ. Nam rubor quidam videbatur in aëre, inter Orientem et Occidentem, in parte aquilonari. Radii autem albi per transversum ruboris illius erant, qui nunc graciles in modum lancearum, nunc vero lati in modum tabularum, et nunc hic, nunc ibi, quasi à terrâ sursum in cœlum erecti. Erant prædicti radii candidi, ut radii solis cum densissimam penetrant nubem. Subsecutus est splendor lucidus, auroræ similis æstivæ, cum in diem clarè lucefcit: postremo densissima nubes subnigra, in eodem climate, quasi à terrâ elevata est, quæ diem illum paulatim succrescens obumbravit*.

Annales Waverleieneses, ann. 1174.

Tota gens Angliæ tussi laborabat, et multi extincti sunt in mense Januarii.

Hoveden, ann. 1177 (1178).

Eodem anno factum est diluvium magnum in Hollande, ruptis fossatis marinis, et diluit ferè omnem substantiam illius provinciae, et homines multos submersit, septimo idus Januarii.

Annales Waverleieneses, ann. 1178.

Erupit mare in Hollande, et submersit homines, villas, pecora innumerabilia, pridie id. Januarii.

Brompton, Chron. ann. 1179.

Infra verò idem natale Domini contigit apud Oxenhale quoddam mirabile a seculo inauditum, scilicet, quod, in ipsâ Domini Hugonis Episcopi Dunelmensis culturâ, terra se in altum ita vehementer elevavit quod summis montium cacuminibus obæquaretur, et quod super alta templorum

* It is hardly possible to give a more exact description than this, which Gervase of Canterbury has delivered down to us, of an *aurora borealis*; a phenomenon then unusual in these parts of the globe, but of late much more frequent.

pinacula emeretur; et illa altitudo ab horâ diei nonâ usque ad occasum solis permansit. Sole vero occidente, eum tam horribili strepitu cecidit, quod omnes cumulum illum videntes, et strepitum casûs illius audientes perterriti; unde multi timore illo obierunt: nam tellus eum absorbit, et puteum profundissimum ibidem fecit*.

Benedict. Abb. ann. 1185.

Interim terræ motus magnus auditus est fere per totam Angliam, *qualis nunquam antea in terrâ illâ auditus est.* Petræ enim scissæ sunt et domus lapideæ ceciderunt, et ecclesia Lincolniensis metropolitana scissa est à summo usque ad dorsum. Contigit autem terræ motus ille in crastino Paschæ Floridi 17 kalendas Maii.

N. B. Hoveden confirms this account in almost the same words.

Diceto Imag. Hist. ad eundem annum.

Herbertus Anglicus natione, natus in Middlesex, transfugum faciens in Siciliam, assensu Regis Willielmi creatus est in Calabria Constanus Archiepiscopus. Cum autem illic terræ motus fieret magnus, prædictus Archiepiscopus cum clero, cum familiâ, cum magnâ parte civium obrutus est. Castella pleraque subversa, millia populorum contrita. Quædam civitas Adriatico Mari contigua, de nocte, populo quiescente, corruit in profundum. Item in Angliâ circa partes Aquilonares factus est terræ motus. *In locis aliquibus ædificia corruerunt.*

Benedict. Abb. ad eundem annum.

Interim, kalendis Maii, ipso die Apostolorum Philippi et Jacobi, circa meridiem, visa est Eclypsis solis per totam Angliam, et, parvo tempore interlapso, secuta sunt tonitrua cum fulgure et tempestate, *et quamplures homines et*

* Camden supposes three deep pits in a field near Darlington, which, in his time, the common people called *the Hell-kettles*, to be the remains of this very extraordinary rising and sinking of the earth. But, in the account above given, only one pit is mentioned; and, naturally, the falling in of an heap of soil so raised would form but one. This hill, probably, was pushed up by subterraneous fires, like that in the Lucrine lake, now called *Monte Nuovo*; but what has filled up the chasm caused by its sinking, or divided it into different cavities, it is not easy to say.

Britann.
Sheppick of
Durham.

22. Hanc autem divisam feci in prædicto loco, Anno incarnationis Domini MCLXXXII. Quam vobis, Fidei meis, per fidem quam mihi debetis, & sacramentum quod mihi jurastis, præcipio ut firmiter & inviolabiliter teneri facietis; & quod super eos, qui ipsam fecerint, manum non apponatis: & quicumque contra hoc venire præsumperit, indignationem & iram omnipotentis Dei, et maledictionem ipsius Dei et meam incurrat.

23. Vobis etiam Archiepiscopis & Episcopis mando, ut, per sacramentum, quod mihi fecistis, et fidem quam Deo et mihi debetis, in synodis vestris, solemniter accensis candelis, excommunicetis, excommunicari faciatis, omnes illos qui hanc divisam meam infringere præsumperint; & sciatis quod dominus Papa hanc divisam meam scripto & sigillo suo confirmavit sub interminatione Anathematis.

This refers
to vol. ii.
p. 499.

No. VIII

From Gervase's Chronicle, col. 1503.

R. De Glanvilla Abbati de Bello Salutem. Præcipio tibi ex parte Domini Regis per fidem quam ei debes, et per Sacramentum quod ei fecisti, ut nullo modo procedas in causâ quæ vertitur inter monachos Cantuarienses et Dominum Cantuariensem Archiepiscopum, donec inde mecum locutus fueris. Teste Willielmo de Glanvillâ per præceptum Domini Regis de ultra mare. Et, omni dilatione et occasione remota, sis ad me apud Londoniam, proximo die Sabbati post festum Sanctæ Margaritæ Virginis, mecum inde locuturus. Teste eodem apud Westmonasterium.

* * Whether other writs of the like nature were sent to the abbots of Faversham and St. Augustine's, who were joined by the pope in commission with the abbot of Battel, or whether it was deemed sufficient to send this to him as the chief of the three, and, perhaps, the only one willing to exercise his authority, I do not find.

I have not swelled this Appendix with the proceedings in the cause between the kings of Castile and Navarre; because they are to be found, not only in Rymer, but likewise in almost all the histories of those times, and are of no such importance to the affairs of this kingdom, as to require the particular inspection of the reader in the original words of the record. Neither will I add here (as I once intended to do) any remarks on the general assemblies

assemblies or councils of the French nation under the first and second races of their kings; because I find it fully done by that excellent writer, Dr. W. Robertson, in the first volume of his History of the Emperor Charles V. (see Proofs and Illustrations, note xxxvii. from p. 355 to 365 inclusively.) Nor will I say more to prove, that the book ascribed to Glanville was not copied from the *Regium Majestatem* of the Scotch; as that subject, since I published the former part of this work, has been learnedly and ably discussed by Sir David Dalrymple. (See an Examination of some of the arguments for the High Antiquity of *Regium Majestatem*.)

Benedict abbot of Peterborough, and, after him, Hoveden, mention a statute made abroad by King Henry the Second, in the year 1177, to this effect: "Na quis pro debito Domini res hominis capere præsumat, nisi homo ejusdem debiti debitor aut pignus exiterat: sed redditus quos homines reddere debent Dominis suis, reddantur creditori Dominorum suorum, et non Dominis. Cæteræ vero res hominum propriæ sint in pace, neque eas pro Dominorum debitis liceat cuique tradere." To which both writers add, "Hoc statutum et consuetudinem statuit Dominus Rex, et teneri præcepit in omnibus villis suis, et ubique in potestate sua, scilicet in Normannia, et Aquitania, et Andegavia, et Britannia, generale et ratum." Sir H. Spelman, in his *Codex Legum Veterum statutorum Regni Angliæ*, gives this statute with these words, "Hoc statutum, sigillo suo roboratum, rex præcepit per omnes ditiones suas *transmarinas* custodiri. Quære, an per *cismarinas*." And he had good cause for this doubt, as the words of both historians determine the extent and operation of the law to Henry's dominions beyond sea, *scilicet in Normannia, et Aquitania, et Andegavia, et Britannia*. Here is no mention of England; for *Britannia* means Bretagne (or Britany) in the writers of that age. Thus the abbot of Peterborough says a little before, "Et cum applicuisset (rex) mist Gaufridum filium suum in *Britanniam*, ad debellandos inimicos suos *Britannia*." This passage therefore does not contain any proof (as some modern writers suppose) that the English were bound in that age by statutes made abroad, to which the parliament of England had not consented.



I N D E X

TO THE

NOTES AND APPENDIXES

TO

BOOKS IV. AND V.

A.

ADELAIS, sister to Philip king of France, is suspected of having a criminal amour with Henry, 389, 390.

Adrian (the IVth) pope, founds his right to dispose of Ireland on a forged grant of Constantine the Great to pope Silvester the IIId, 297. his bull conveying that kingdom to Henry, 323, 324.

Alexander (the IIIId) pope, his motives for the canonization of Becket, 290.

Arthur, king of Britain, doubts concerning his existence, 390, 391.

Afedoddin, kills a man in a quarrel, and flies from Bagdat, 374.

Affrology, the study of it introduced into England by its intercourse with Spain, Sicily, and the Holy Land, 388.

B.

Baldwin (the Vth) king of Jerusalem, his death falsely imputed to violent means, 389.

Baflea, sister to Strongbow, writes in cypher to Raymond her husband, on her father's death, 373.

Becket, ridiculous accounts of miracles, pretended to have been wrought at his tomb, 289, 290. an account of oblations made at his altar, compared with those made at Christ's and the Virgin's, 379, 380.

Bede, his account of the establishment of the Irish Scots in the western parts of North Britain, appears doubtful, 367, 368.

Benedict, abbot, the reasons assigned by him for Henry's stopping the earl of Flanders from

I N D E X.

- from going to the Holy Land improbable, 373. a mistake of his, in quoting a summons of Henry's to his military vassals, 374, 375. his description of the persons who composed that parliament at Northampton which confirmed the statutes of Clarendon inaccurate, 376, 377.
- Bernard*, his account of the irreligion and barbarism of the people of Conaught, as related to him by Malachy, archbishop of Armagh, 295.
- Bonaught* and *Casherings*, exactions imposed upon the Irish, somewhat similar to coign and livery, 293.
- C.**
- Cæsar*, diffines the institutions of the Druids, to Gaul and the British isles, 292.
- Canterbury*, Richard archbishop of, his letter to the bishops of Winchester, Norwich, and Ely, 416.
- Casbell*, Plaster of, its authenticity discredited, by bishop Stillington, 291.
- Castles*, manner of raising them on sudden emergencies, 316.
- Celts*, they are supposed to have been the first institutors of ordeals by fire and water, 320. were likewise accustomed to decide controversies by duel, 320, 321.
- Chentarf*, battle of, contradictory accounts concerning it, 293.
- Cogan*, Milo de, his speech to an Irish chieftain, at the Dublin, 303. the time death, mistaken by G Cambrensis, 386.
- Concani*, a Celtic nation came from Spain, and in Ireland, 292.
- Convention* between Henry his sons, 333—336.—th of Scotland, 337—340. the king of Conaught, 342.
- D.**
- Diceto*, his account of the chery of Henry's general the battle of Fernham probable, 315, 316.
- E.**
- Eleanor*, Henry's queen, count of her cousin from several contemporary authors, 386, 387. and her from the archbishop Rouen, 327, 328.
- F.**
- Flemings*, ten thousand of said by William of Ne to have been slain at the of Fernham, 315.
- Frederick Barbarossa*, emperor Germany, an improbable count given by some of what passed between Henry the Lion, Saxony, his letter to Henry, 418.

I N D E X;

G.

Gervase of Canterbury, his reasons for Henry's expedition into Ireland rejected, and the true motives assigned, 307.

Giraldus Cambrensis, his account of the supposed vindictive disposition of the Welsh and Irish saints founded on the character of those nations, 399, 400.

Glanville, Ranulph de, his writ of inhibition, to the monks of Canterbury, 424.

H.

Henry, an account of the application made to him, by the people of Wexford, concerning Fitzstephen, as related in the historical poem, rejected, 308. *Gervase* of Canterbury's account of his familiar intercourse with Becket's murderers, highly improbable, 309. he accepts fines from persons to excuse them from the fire ordeal, 321. his grant to Hugh de Lacy of the province of Meath, 324. a letter to him from the cardinal legates, containing his terms of reconciliation with the church, on account of Becket's murder, 326, 327. a letter to him from the archbishop of Rouen and the bishop of Lisieux, his ambassadors to Louis king of France, 329, 330. his letter to pope Alexander the III^d, 331, 332. to Frederick, emperor of Germany, 332, 333. his degree

of consanguinity with Eleanor his queen, 342. his letter to pope Alexander, 343. his charter for the restoration of wrecks to the owners, 355—357. he obliges cardinal Vivian the pope's legate, on his going into Scotland, to take an oath, that he would do nothing prejudicial to the interests of his kingdom, 375, 376. the imputation of his sowing dissensions among his children, unjust, 383. the opinion of his having employed Brabanters, in the war against his son, refuted, 383, 384. a proof, of his having enforced the statutes of Clarendon, after Becket's death, 384, 385. his flight from the conference near Gisors, not deemed turning his back on his enemies, 403. his desire of having the bishoprick of Winchester bestowed on Geoffrey, his natural son, accounted for, *ibid.* he makes no mention of William Longsword, his natural son, in his last illness, *ibid.* his charter to the citizens of Bristol to inhabit Dublin, 407. to the citizens of Dublin, granting them a free trade with the rest of his dominions, 408. his grant to Fitzstephen and Milo de Cogan, of the kingdom of Cork, and custody of the city, 408, 409. his assize for the arming of his subjects, 412—414. his assize of the forest, 417, 418. his letter to Frederick, emperor of Germany, 418.

I N D E X.

- to the Greek emperor, 419.
his last will and testament,
421—5.
- Henry*, the young king, William
of Newbury's account, of his
drawing of his brothers Richard
and Geoffry with him out of
Aquitaine, rejected, 313. he
helps to sustain Philip's crown
at his coronation, *ib.* his giv-
ing *his cross* to William Ma-
rechal, as related by Hove-
den, a mistake, 384.
- Henry* the Lion, duke of Saxony,
an account of his travelling
expences from Winchester to
London, 381. the improbabi-
lity of his advising Henry, to
fow dissensions among his chil-
dren, 383.
- Heraclius*, patriarch of Jerusa-
lem, Giraldus Cambrensis's ac-
count, of his request to Henry
concerning prince John, re-
jected, 385, 386. his supposed
abuse of Henry discredited,
386.
- Hoveden*, a mistake of his con-
cerning a supposed bull of
pope Clement the III^d, 397,
398.
- I.
- John* of Salisbury attempts to
justify Becket's cause, by the
pretended miracles wrought at
his tomb, 290. charges the
archbishop of York with the
commission of the most detest-
able crimes, 382, 383. his let-
ter to the archbishop of Sens,
415—7.
- Irisb*, their provincial kings eli-
gible to be advanced to the
supreme monarchy, as some
of the German electors are at
present to be chosen emperors,
292. an account from Dr.
Warner of the revenues of
their monarchs, and what they
consisted in, 293. were unac-
quainted with the use of the
long-bow, 397.
- Isaac* Angelus, the Greek em-
peror, his excessive pride and
haughtiness, 399. his letter to
Henry, 420.
- Juries*, some in Henry the II^d's
reign, summoned as witnesses
of the fact, 370.
- L.
- Lacy*, Hugh de, surrenders the
custody of the city of Dublin
to the earl of Pembroke, 317.
- Louis*, king of France, his answer
to Henry's ambassador, as re-
ported by William of New-
bury, 313. a reason assigned
for its supposed contents, 314.
he reproaches Henry, with
frequent breaches of faith, *ibid.*
is warned by a pretended vi-
sion to repair to Becket's
tomb, 378, 379.
- Lusignan*, Geoffry de, a mistake
concerning him, by the wri-
ter of Saladin's life, 401.
- M.
- Mac Culinan* Cormac, king of
Munster, and bishop of Cas-
bell,

I N D E X.

hell, is slain in battle, 291.
his will, 298.

Mac Murogh Dermot, king of
Leinster, it appears doubtful
whether an act of cruelty, at-
tributed to him in the text,
was committed by him or his
father, 443, 444.

Magnus, king of Norway, his
insolent message to Murogh
O Bryan, 294.

Malachy, archbishop of Armagh,
an account of miracles pre-
tended to have been wrought
by him, 295.

Margaret, Henry the young
king's queen, supposed to have
been confined in the Tower
of London, 317.

Montesquieu, notions of his, con-
cerning the fire ordeal, and
trials by combat, censured,
318—320.

Morville, Hugh de, one of Bec-
ket's murderers, proofs of his
being alive until the beginning
of the reign of king John,
311—313.

N.

Natural history, some account
of the most remarkable phæ-
nomena in it, from the death
of Edward the Confessor to
that of Henry the II, 19—
28.

Nicholas, cardinal of Arragon,
his audacious forgery of an
oath pretended by him, to
have been taken by Henry and
his son the young king, 310.

Norhampton, statutes enacted at

Clarendon, confirmed in a
parliament held there, 351—
354.

O.

O. Conor, Charles, Irish annals
translated by him, and sent to
the Author of this work, ac-
count of them, 300, 301.

O. Meey, is supposed to have
been instigated to the murder
of Hugh de Lacy by the Irish
clergy, 388.

O. Ruark, improperly stiled king
of Meath; by the English hi-
storians, 302.

P.

Parliament, Irish, a remarkable
declarative statute, passed by
it in queen Elizabeth's time,
296, 297.

Pembroke, Strongbow earl of,
Stanisburst's account of his put-
ting his son to death rejected,
275, 276.

Peter of Blois, his letter, no
proof of Henry's dependence
on the see of Rome, 314, 315.

Petriae, engines used in sieges,
resembling the catapultæ of
the ancients, 395. accounts of
their prodigious force, 396.

Pictures, one made by the Chris-
tians representing Christ
scourged by an Arab, 395.—
another painted by the order
of Conrade of Montferrat, in
which a Mahometan horse-
man is drawn, with the feet
of his horse trampling and
stamping

I N D E X.

stealing on the holy sepulchre,

395.

Port, Adam de, is fined and pardoned, 370.

Prendergast, Maurice de, his noble behaviour and gratitude to Donald, chieftain of Offory, 305—307.

Public fame, how far it was a legal foundation for a criminal prosecution, 321.

R.

Records, relating to itinerant justices, taken from Madox's History of the Exchequer, 344—351. to the family of Gerald MacGillemorey in Birmingham Tower, Dublin, 368—370.

Rogan, Maurice, interpreter to *Diarmid*, king of Leinster, reasons for not believing him to have been the author of the historical poem, and for rejecting the matter it contains, in most particulars, 298, 300.

Richard, king of England, revives the practice of tournaments in his kingdom, 378. instances of his extraordinary prowess, 392. the opinion conceived of him by the Arabian writer of Saladin's life, 392, 393.

S.

Saladin, his humanity and liberality, 394.

St. Petrac, his body stolen by a monk, and carried into Bretagne, 400, 401.

Scotland, freeholders fewer in that kingdom, in proportion to the number of people, than in England, and why, 317.

T.

Tripoly, Raymond earl of, is exculpated of the charges brought against him by his enemies, 393, 394, 396.

Tyrone, Con., O Neal earl of, curses his posterity, if they should ever erect edifices of stone or brick, 373.

W.

Walsb, a land south-west of Ireland, supposed to have been part of the continent of America, said to have been discovered by Madoc, one of their princes, in the reign of Henry II, grounds of that opinion examined, 402—404.

William the Conqueror, laws of his, 354, 355, 358, 366.

William, king of Sicily, his bequests to Henry, 398, 399.

END of the INDEX.

There

There being in the Dublin edition, of the former parts of this History, some false prints, I shall here mark them out, with the proper corrections.

V O L. I.

Page.	Line.	
120	10	instead of <i>had granted</i> read <i>had formerly granted</i> .
—	37	instead of <i>could obtain</i> read <i>can ever obtain</i> .
294	8	instead of <i>gained the port</i> read <i>gained the Norman port</i> .
401	17	instead of <i>dangerous</i> read <i>generous</i> .
417	5	from the bottom, instead of <i>she was of spirit</i> read <i>she was of a spirit</i> .

NOTES, at the End of VOL. I.

Page.	Line.	
492	37	instead of <i>filium</i> read <i>filiam</i> .
493	8	from the bottom, leave out <i>any</i> before <i>one</i> .
495	1	— , instead of <i>juravet</i> read <i>juraret</i> .
523	7	instead of <i>canon</i> read <i>canons</i> .
556	32	instead of <i>Mac</i> read <i>Has</i> .
560	15	from the bottom, instead of <i>magno valde</i> read <i>walde magno</i> .
581	17	from the bottom, before <i>any time</i> insert <i>at</i> .
585	5	instead of <i>but differently assessed</i> read <i>but had been differently assessed</i> .

APPENDIX, VOL. I.

Page.	Line.	
623	27	instead of <i>masters</i> read <i>masters</i> .

False Stops in the First Volume, which hurt the Sense.

Page.	Line.	
135	15	put the comma after <i>but</i> instead of before it.
546	13	after <i>volens</i> put a comma.
—	17	after <i>consideratione</i> put a comma.
547	12	after <i>coepiscopis</i> leave out the comma, and put one after <i>suis</i> .
550	22	after <i>witch</i> a comma is wanting.

551 17 from

ERRATA IN VOL. I.

Page.	Line.	
551	17	from the bottom, after <i>prince</i> a comma is wanting.
590	1	after <i>Stephen</i> a comma is wanting.
615	16	from the bottom, after <i>Juds</i> a comma is wanting.
45	12	—————, instead of <i>being</i> read <i>having been</i> .
120	18	leave out <i>several</i> .
134	19	from the bottom, after <i>delivered</i> leave out <i>up</i> .
135	14	—————, leave out <i>at home</i> .
140	4	—————, after <i>and</i> insert <i>took her again</i> <i>to</i> .
208	20	leave out <i>the subsistence of</i> .
295	11	instead of <i>the earl of Anjou</i> read <i>Geoffry</i> .
—	16	leave out <i>natural</i> .
299	5	from the bottom, instead of <i>prince</i> read <i>commander</i> .
306	8	leave out <i>absolutely</i> .
309	6	from the bottom, instead of <i>and confidently sup-</i> <i>posing that it could not be passed</i> read <i>and sup-</i> <i>posing that the stream could not be passed</i> .
—	17	from the bottom, after <i>waters</i> leave out <i>so as to</i> <i>be thought inaccessible</i> .
310	1	leave out <i>that there had been</i>
—	13	from the bottom, instead of <i>shut up all access from</i> <i>the country</i> read <i>stopped all access to it from the</i> <i>neighbouring country</i> .
329	4	instead of <i>the earl</i> read <i>he</i> .
—	23	instead of <i>he</i> read <i>Zengbi</i> .
410	5	from the bottom, leave out <i>she could</i> .
411	11	instead of <i>to the duties of the high rank he was</i> <i>born to read to all the regal duties</i> .
414	15	instead of <i>he</i> read <i>that minister</i> .
470	11	instead of <i>which made our King James the First</i> <i>say, not unwittily, that he was a sore saint for</i> <i>Scotland; read which made King James the</i> <i>First of Scotland say, not unwittily, that he</i> <i>was a sore saint for the crown</i> .
529	8	from the bottom, instead of <i>his</i> read <i>Robert's</i> .
550	3	—————, after <i>gentleman</i> leave out <i>with</i> <i>him</i> .
565	11	after <i>eight</i> leave out <i>o'clock</i> .
578	15	from the bottom, instead of <i>that he who was</i> read <i>that a prince</i> .
592	19	from the bottom, instead of <i>till the best part of</i> <i>them were read till the greater part of them had</i> <i>been</i> .

ERRATA IN VOL. II.

Page. Line.

629 6, 15 from the bottom, instead of *statute* read *charter*;
and in the last line, instead of *I shall say more*
of it in my third volume, read *Of these jurif-*
dictions I shall say more in my third volume.

False Prints in the Second Volume.

Page.	Line,	
32	8	instead of <i>it would by his</i> read <i>it would have been</i> <i>so by his.</i>
49	16	from the bottom, after <i>homage</i> put a full stop; and mark the beginning of the next paragraph by a great <i>H</i> in <i>be.</i>
50	10	instead of <i>bad served</i> read <i>had formerly served.</i>
—	7	from the bottom, instead of <i>his negotiation</i> read <i>the negotiation.</i>
66	1	instead of <i>sometime</i> read <i>some time.</i>
67	3	instead of <i>this reign</i> read <i>his reign.</i>
159	18	from the bottom, instead of <i>that were taken</i> read <i>they were taking.</i>
167	2	for of <i>Henry</i> read <i>King Henry.</i>
207	15	from the bottom, instead of <i>the demands of the</i> <i>barons made to King John</i> read <i>the demands</i> <i>which the barons made to King John.</i>
282	1	from the bottom, instead of <i>at</i> read <i>on.</i>
284	12	—————, instead of <i>twenty-two</i> read <i>twenty-eight.</i>
307	3	from the bottom, after <i>assent</i> read <i>To him belonged</i> <i>the right of assembling and dissolving the par-</i> <i>liament or great council.</i>
316	20	instead of <i>were</i> read <i>was.</i>
323	14	instead of <i>were</i> read <i>was.</i>
341	15	from the bottom, instead of <i>in</i> read <i>into.</i>
343	5	instead of <i>grantees</i> read <i>grantee.</i>
458	12	instead of <i>derived from them by the Britons</i> read <i>derived from them by the Cornish Britons.</i>
463	13	instead of <i>these</i> read <i>those.</i>
465	8	from the bottom, instead of <i>cases</i> read <i>causes.</i>
475	1	—————, after <i>be</i> insert <i>had.</i>
480	17	—————, instead of <i>shall be</i> read <i>will be.</i>
483	22	leave out the second <i>to.</i>
500	6	from the bottom, instead of <i>at that season</i> read <i>in</i> <i>that season.</i>
501	1	after <i>that</i> insert <i>had.</i>
—	8	instead of <i>Campania</i> read <i>Campana.</i>

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ERRATA IN VOL. II.

Page.	Line.	
507	5	instead of <i>the justices due</i> read <i>and the justice due.</i>
511	18	instead of <i>than</i> read <i>then.</i>
537	25	instead of <i>it</i> read <i>this.</i>
543	17	from the bottom, instead of <i>so do so</i> read <i>so to do.</i>
627	18	—————, instead of <i>made to the king</i> read <i>delivered to the king.</i>

False Stops in the Second Volume, which hurt the Sense.

Page.	Line.	
307	7	from the bottom, leave out the <i>comma</i> after <i>Aristocracy.</i>
367	11	after <i>clergy</i> put a <i>comma.</i>
470	17	after <i>grace</i> insert a <i>comma.</i>
499	2	from the bottom, leave out the <i>comma</i> after <i>could.</i>
562	13	—————, instead of the <i>semicolon</i> put a <i>comma.</i>

Corrections by the Author in the Second Volume.

Page.	Line.	
25	8	instead of <i>would have been singly sufficient</i> read <i>would alone be sufficient.</i>
111	17	leave out <i>was</i> and <i>for.</i>
155	14	after <i>promotion</i> leave out <i>to the see of St. David's.</i>
166	11	from the bottom, for <i>balistæ</i> read <i>catapultæ.</i>
178	12	—————, instead of <i>there was paid</i> read <i>the English paid.</i>
209	10	instead of <i>the delivering of ourselves from so heavy a yoke, and the recovering of that independance</i> read <i>the delivering us from so heavy a yoke, and recovering that independance.</i>
235	3	from the bottom, instead of <i>were honoured with that title</i> read <i>had the title of barons.</i>
343	15	from line 15 to line 22, instead of <i>yet, that all have been brought into a more perfect and a more regular state of freedom, by the re-asserting of ancient rights, impaired by ill practices; or by the application of feudal notions to the course of law in this kingdom, beyond what was authorized by the consent of the nation in parliament, cannot, I think, be denied;</i> read <i>yet, that all have been brought into a more perfect and regular state of freedom, by the re-asserting of ancient rights, which the application of feudal</i>

ERRATA IN VOL. II.

Page.	Line.	
		<i>dal notions to the course of law in this kingdom, or ill practices, had impaired, cannot, I think, be denied.</i>
373	6	from the bottom, instead of <i>under homage to the crown, alledging, &c.</i> end the period at <i>crown</i> , and begin a new one with <i>He alledged.</i>
380	14	instead of <i>put him in mind of</i> read <i>urge to him.</i>
381	4	instead of <i>him</i> read <i>Becket.</i>
395	15	instead of <i>one who was acquainted with all the secrets of his foreign affairs</i> read <i>one acquainted with the secrets of his foreign affairs</i>
403	4	instead of <i>made to him</i> was read <i>returned was.</i>
445	5	instead of <i>from the apprehensions of a disputed succession in his kingdom</i> read <i>from apprehensions of a disputable succession to his kingdom.</i>
445	10	instead of <i>relates to him</i> read <i>tells the archbishops.</i>
	17	instead of <i>he</i> read <i>John.</i>
452	19	leave out <i>very.</i>
454	2	before <i>observes</i> leave out <i>well.</i>
457	18	after <i>subsistence</i> leave out <i>for his forces.</i>
475	1	from the bottom, after <i>cordial</i> leave out <i>support and.</i>
476	8	after <i>therefore</i> leave out <i>the Jesuit who was.</i>
491	4	from the bottom, instead of <i>his disapprobation of them</i> read <i>his disapprobation of the several causes of them.</i>
523	2	from the bottom, instead of <i>that prelate</i> read <i>the primate.</i>
538	4	from the bottom, instead of <i>not fail of having</i> read <i>not fail to have.</i>
553	22	instead of <i>Johanna</i> read <i>Jane.</i>
594	5	after <i>Becket</i> insert <i>or of his correspondents.</i>
611	16	instead of <i>would thus despoil his mother, the church of Canterbury, without cognizance of the cause, of her ancient right,</i> read <i>would thus, without cognizance of the cause, despoil his mother, the church of Canterbury, of her ancient right.</i>
640	10	from the bottom, instead of <i>to have spoken</i> read <i>had spoken.</i>

ERRATA IN NOTES ON BOOKS II. AND III.

False Prints in the Notes on the Second and Third Books, and in the Appendixes to both.

Page.	Line.	
47	9	from the bottom, instead of <i>offensum</i> read <i>offensam</i> .
53	14	—————, instead of <i>honor of Skipton</i> in <i>Craven</i> read <i>honours of Skipton and Craven</i> .
152	9	instead of <i>de Breton</i> read <i>le Breton</i> .
154	14	instead of <i>then</i> read <i>thence</i> .
196	1	from the bottom, instead of <i>trewis</i> read <i>treguis</i> .
203		No. X. refers to p. 345. Vol. II. See also page 577. Vol. I.
204		in the reference, No. II. after 381. insert 380, 386.
208		in the reference, No. III. after <i>page</i> insert 461.
213	23	instead of <i>declinatis</i> read <i>declinetis</i> .
215	4	instead of <i>quam</i> read <i>quâ</i> .
224		No. III. of the Appendix, the mark of the abla- tive case is sometimes left out, where, in or- der to make the sense more clear, it should have been put.
248		No. VII. first line, instead of <i>quam</i> read <i>quâ</i> .

Corrections by the Author.

Page.	Line.	
56	7	instead of <i>were honored with that title</i> read <i>had the title of barons</i> .
86	21	instead of <i>There can be nothing more different than the preservation of liberties and franchises used through the realm in elections, from the commu- nicating of a liberty and franchise to persons not entitled to it before</i> ; read <i>There can be nothing more different from the communicating of a li- berty and franchise to persons not entitled to it before, than the preservation of liberties and franchises used through the realm in elections</i> .
65	6	instead of <i>Hervey of Mountmaurice, with three knights</i> , read <i>Hervey of Mountmaurice, Strong- bow's uncle, with three knights, or men at arms</i> .
122	17	from the bottom, instead of <i>July</i> read <i>August</i> .
133	16	—————, instead of <i>these ancient members of the French kingdom</i> read <i>the ancient mem- bers, &c.</i>

ERRATA IN VOL. III.

vii

Page.	Line.	
144	10	instead of <i>terriotories</i> read <i>territories</i> .
168	20	instead of <i>your Sublimity</i> read <i>your Highness</i> .
173	2	instead of <i>be</i> read <i>Becket</i> .
174	11	instead of <i>subjection</i> read <i>obedience</i> .
256	3	from the bottom, leave out <i>all</i> .
288	9	leave out <i>the times requiring an example</i> , and the <i>commas</i> before and after those words.
290	18	from the bottom, instead of <i>Damascus</i> read <i>A-</i> <i>leppo</i> .
294	15	from the bottom, instead of <i>it's</i> read <i>their</i> .
—	4	—, instead of <i>knight hospitallers</i> read <i>knights hospitallers</i> .
299	11	instead of <i>Cælofyria</i> read <i>Cælesyria</i> .
328	9	instead of <i>Pomerai</i> read <i>Pumerat</i> .
—	8	from the bottom, instead of <i>William Fitzaldelm</i> read <i>Robert Fitzaldelm</i> .
331	3	instead of <i>sixty</i> read <i>seventy</i> . And ten lines from the bottom of the same page read also <i>seventy</i> instead of <i>sixty</i> .
342	14	instead of <i>countries</i> read <i>counties</i> .
389	6	from the bottom, instead of <i>thought</i> read <i>deemed</i> .
431	20	after Conaught add " <i>who, on this occasion, had</i> <i>come out of his spiritual retreat</i> ."

False Stops, which hurt the Sense.

Page.	Line.	
25	4	put a <i>comma</i> after <i>prince</i> , instead of the <i>semicolon</i> .
53	3	leave out the <i>comma</i> after <i>was</i> .
56	18, 19	after <i>majorem</i> put a <i>semicolon</i> instead of the <i>period</i> , and write the following <i>and</i> with a <i>little a</i> .
68	14	put a <i>comma</i> before <i>and</i> .
91	8	from the bottom, after <i>vestri</i> put a <i>semicolon</i> instead of the <i>period</i> , and write the following <i>ita</i> with a <i>little i</i> .
145	16	from the bottom, after <i>but</i> insert a <i>comma</i> .
147	6	—, there ought to be no <i>break</i> after <i>king</i> .
150	18	leave out the <i>comma</i> after <i>youth</i> .
151	5	after <i>verses</i> insert a <i>comma</i> .
247	12	after <i>ordinavit</i> instead of the <i>colon</i> put a <i>comma</i> .
272	4	after <i>which</i> omit the <i>comma</i> .
351	3	from the bottom, after <i>revenge</i> omit the <i>comma</i> .

ERRATA IN VOL. III.

Page. Line.

496 2 from the bottom, after *prince* put a *comma* instead of the *semicolon*.514 6 from the bottom, after *Henry* put out the *comma*.

The Reader will find some *commas* where there should be *semicolons*, but I do not think it necessary to mark the places.

Errata in the Figures of the References.

Page.

277 in the two references to *Benedict. Abb.* instead of 1167, 1166, read 1177, 1276.439 in the lower reference to *Benedict. Abb.* instead of 5478 read 549.

M. B. In Sir H. Spelman's *Codex Legum Veterum Statutorum Regni Angliæ*, which Wilkins has inserted into his collection, p. 337, there is a libellous character of King Henry II. given by one Radulfus Niger, who, having been driven out of England by that prince, revenged himself by calumnies thrown upon him in a chronicle, which he wrote for that purpose. It does not appear to me of sufficient authority to be worth transcribing here; and I wonder that Spelman should have given it a place in his valuable work.

There are also in a treatise of Giraldus Cambrensis *de Instructione Principis*, Cotton MSS. Julius, B. XIII. several passages very slanderous against Henry II. but in which the malice is so glaring, and the stories told are so senseless, as to take all credit from them; for which reason it has never been thought worth while to print this part of that author's writings; nor have I paid any regard to these passages in compiling this work.

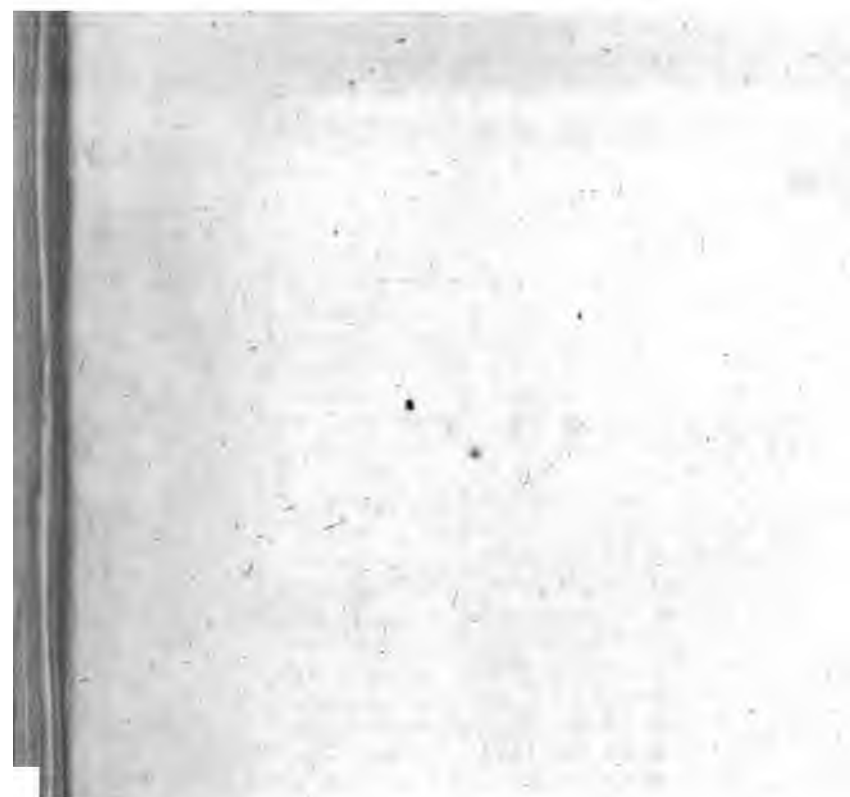
THERE are several *false spellings* in the different parts of this edition, which the reader himself will easily correct. But, with regard to the ancient and modern orthography, I would here observe, that the former seems to me much better than the latter in many particulars. For instance, I think that in many of our words derived from the Latin, such as *candour*, *favour*, *bonour*, the *u* was inserted, and ought to be continued, to mark the true pronunciation, which has more of the *u* than of the *o*; and likewise to distinguish the English from the Latin, by a different termination. The French, for the same reasons, write *candeur*, *faveur*, *bonheur*, instead of *candor*, *favor*, *honor*. I also think, that in the words which our language has derived immediately from the French, though remotely from the Latin, the French spelling should be followed, except with regard to the termination of them; as, for example, *entire*, which comes from the French *entier*, should not be written (as it is by some modern authors) *intire*, after the Latin word *integer*, but with an *e* at the beginning of it; and yet with a different termination, to vary it from the French, as well as from the Latin, and so make it our own. It, moreover, seems to me, that the perfect tense and the participle passive of words which end in *es*, *as*, or *is*, such as *possess*, *express*, *pass*, *dismiss*, ought to be distinguished from the imperfect tense of those verbs, by writing *possess*, *express*, *pass*, *dismiss*, instead of *possessed*, *expressed*, *passed*, *dismissed*: for whatever makes the sense more distinct and perspicuous is useful in a language. At present our spelling, from the changes introduced within these last thirty years, is under no settled rule.—In some of the paragraphs or sentences printed in Italick characters, some words are left in Roman letters, which should have been in Italick, as the sense will shew to the reader.

On revising and considering a passage cited by me, in p. 339 of the second volume of this History, from a letter of Peter of Blois, concerning the state of London in his time, I suspect there is an error of the press or the manuscripts, in all the copies I have seen; and that instead of *quadraginta millia* we should read *quadringenta*; the former number of inhabitants being not in proportion to the bigness of the city, as described by the same writer, nor to what we know, from the testimonies of many others in
that

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that age, of its importance, dignity, and power in the kingdom. If any authority for this correction of the text can be found in the manuscripts, I should make no doubt of preferring it to the reading I have followed, and putting *four hundred thousand* instead of *forty thousand*.

F I N I S.



1. The first part of the document is a list of names and dates.

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